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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

ALLEN CLEMENTS, ALAN BRINN, FRANK FARACI, ALEX KARRAS and SOL KARRAS,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

CHARLES A. BELLOWS
10 South LaSalle Street
Chicago, Illinois
Attorney for Petitioner Clements
and
JULIUS LUCIUS ECHELES
30 North LaSalle Street
Chicago, Illinois 60602
Attorney for Petitioners, Brinn, Faraci, A. Karras and S. Karras

JASON E. BELLOWS
and
SHERMAN C. MAGIDSON
On the Brief
for Petitioner Clements

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INDEX

	PAGE
Opinion of the Court Below	2
Statement of Jurisdiction	2
Questions Presented	2
Constitutional Provisions Involved	4
Statement of the Case	5
Reasons relied on for the allowance of the Writ	8
Conclusion	49
Appendix "A"	App. 1
Appendix "B"	App. 19
Appendix "C"	App. 27

LIST OF AUTHORITIES

Cases

Aguilar v. Texas, 378 U.S. 108 (1964)	34, 36, 37, 44, 49
Chapman v. United States, 365 U.S. 610 (1961)	32
Coppedge v. United States, 272 F.2d 504, D.C.Cir.	14
Delaney v. United States, 199 F.2d 107, 1 Cir	25
Draper v. United States, 358 U.S. 307 (1959)	46, 49
Estes v. Texas, ... U.S. ....., (June 7, 1965)	10
Go-Bart Importing Co. v. United States, 282 U.S. 344 (1931)	39
Harris v. United States, 321 F.2d 739, 6 Cir.	35
Irvin v. Dowd, 366 U.S. 717 (1961)	8

PAGE

Jones v. United States, 357 U.S. 493 (1958) 32, 42, 45, 46

Mapp v. Ohio, 367 U.S. 643, (1961) 30

Marron v. United States, 275 U.S. 192 (1927) 38, 39, 45

Marshall v. United States, 360 U.S. 310 (1959) 3, 8, 25

People v. McIntyre, 15 Ill. 2d 350 (1959) 37

People v. VanDuyne, 43 N.J. 369 (1964) 49

Preston v. United States, 376 U.S. 764 (1964) 38, 39, 42

Rent v. United States, 209 F. 2d 893, 5 Cir. 38

Shepherd v. Florida, 341 U.S. 50 (1951) 27

Trupiano v. United States, 334 U.S. 699 (1948) 30, 37, 50

United States v. Accardo, 298 F.2d 133, 7 Cir. 14

United States v. Gearhart, 326 F.2d 412, 4 Cir. 38

United States v. Jones, 204 F.2d 745, 7 Cir. 38, 39

United States Lassoff, E.D.Ky. (1957), 147 F.Supp. 944 35

United States v. Lefkowitz, 285 U.S. 452 (1932) 39

United States v. Rabinowitz, 339 U.S. 56 (1950) 30, 31, 32, 37, 46, 50

Wong Sun v. United States, 371 U.S. 471 (1963) 33, 34

Constitutional Provisions

Constitution of the United States

Amendment IV 3, 4, 30, 35, 44, 50

Amendment XIV 2, 3, 4, 30, 49

Books and Articles

PAGE

Mr. Justice Douglas, "The Public Trial and the Free Press," 46 A.B.A.Jour. 841 (1960) 24, 25

Griswold, "When Newsmen Become Newsmakers," Saturday Review, October 24, 1964, p. 24 ..... 9, 10

Inbau, "Free Press—Fair Trial," Northwestern University School of Law, pp. 1-2, (1964) 23, 24

Powell, "The Right to a Fair Trial," 51 A.B.A. Jour. 534 (1965) 27

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners, Allen Clements, Alan Brinn, Frank Faraci, Alex Karras and Sol Karras, respectfully pray that a Writ of Certiorari be issued to the Supreme Court of Illinois to review its decision affirming a judgment of conviction in the Criminal Court of Cook County, Illinois, judging them guilty of the crime of conspiracy to commit

burglaries and sentencing each of them to a term in the penitentiary.[1]

OPINION BELOW

The opinion of the Supreme Court of Illinois was handed down on January 21, 1965, is reported at 32 Ill. 2d 232, and is printed in this Petition as Appendix "A". Timely Petitions for Rehearing were denied on March 17, 1965.

JURISDICTION OF THIS COURT

1. The date of judgment sought to be reviewed was entered on March 17, 1965, when the Petitions for Rehearing were denied. This Petition for a Writ of Certiorari is filed within ninety days from the date of said denial.

2. The jurisdiction of this Court is invoked under Title 28, U. S. Code, Sec. 1257 (3) and Rule 22 (1) of the Rules of this Court.

QUESTIONS PRESENTED FOR REVIEW

1. Where headline newspaper publicity during the course of a twelve week trial of eight policemen accused of conspiracy to commit burglaries is of such volume and intensity as to violate concepts of a fair trial, in accordance with the due process clause of the Fourteenth Amendment to the Constitution, may a State conviction stand where during the trial front page headlines appeared exclaiming:

A. **"COP JUDGE DECIDES: 'I CAN BELIEVE THIEF', POLICE LOSE ACQUITTAL BID"** (where "thief" was the chief prosecution witness);

And falsely printing:

---

[1] Clements was sentenced to 2-5 years; Brinn was sentenced to 1-3 years; Faraci was sentenced to 2-5 years; Alex Karras was sentenced to 2-5 years; and Sol Karras was sentenced to 2-3 years.

B. **"TWO COPS OFFER GUILTY PLEA"**;

And further falsely printing, on the night before and on the morning of the day preceding jury argument,

C. **"COPS TRIED TO KILL ME"** (referring to State's chief witness)?

2. Under the special circumstances of this case (*Marshall* v. *United States,* 360 U.S. 310, 3 L.ed 2d 1250, 79 S.Ct. 1171) was it not error for the trial judge to refuse to inquire of the jurors individually, and outside the presence of each other, whether any had seen the **BOLD FACE HEADLINES** on their way going from or coming to the courthouse?

3. When it was demonstrated, in Petitioners' motion for a new trial, that the jurors had read and discussed the newspaper headlines, falsely stating that defendants tried to kill the State's chief witness, was it not a violation of due process of law for the trial judge to refuse to hold a hearing to determine whether, in fact, the jurors read such articles or had seen such headlines?

4. Where state officials have both the time and the opportunity to obtain valid search warrants prior to entering private homes and conducting searches therein, are not these state officials prohibited by the Fourth and Fourteenth Amendments to the Constitution from conducting searches without valid search warrants?

5. Assuming that state officials may justify the search of a private dwelling as an incident of a lawful arrest, may a search pursuant to a warrant, later determined to be invalid, subsequently be justified as an incident to a lawful arrest?

6. Assuming that state officials may disavow an invalid warrant and claim that a challenged search was incident to a lawful arrest, what knowledge must searching

officers have to enable them to claim that arrests based upon probable cause were made; in this context, are the uncorroborated accusations of a man with a long police record, who has been incarcerated for a period of five months before making the accusations and who was still incarcerated at the time the accusations were made, and which accusations referred to matters occurring some sixteen months before, sufficient reasonable grounds upon which to base an arrest without a warrant?

7. Assuming that such accusations are sufficient, may a doctrine of "imputed reasonableness" be employed so that lower ranking police officers may later be justified in their actions on the basis of what had been told to their superiors by a third person, where the specific information had not been divulged to the lower ranking officers?

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment to the Constitution of the United States as follows:

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fourteenth Amendment to the Constitution of the United States as follows:

> "No state . . . shall . . . deprive any person of life, liberty or property without due process of law . . . "

STATEMENT OF THE CASE.

Petitioners (together with three other defendants)[2] were indicted for conspiracy to commit burglaries. These eight were policemen at the patrol level in the City of Chicago. The indictment charged that they conspired with Richard Morrison and Floyd Wilde to commit the burglaries. Morrison was the chief prosecution witness.

As a result of charges made by Morrison while he was in custody awaiting trial on various felony charges, the Chicago Police Department and the State's Attorney of Cook County procured search warrants and executed those warrants by searching at night the homes of the eight defendants below. Prior to trial, petitioners filed motions to quash the search warrants and suppress the evidence that was taken thereby. A pre-trial hearing was held, after which the trial court quashed the search warrants. As an alternative to the warrants, the State maintained that the searches and seizures could be justified on the basis of consent, waiver of constitutional rights by virtue of employment as police officers, and searches incident to lawful arrests without warrants. (R. 356, Vol. 1)[3] The trial judge rejected all but the last contention. When

[2] The three other defendants who were convicted elected not to appeal. Defendants Peter Beeftink and Henry Mulea, convicted by the jury, were sentenced to pay fines of $500.00. Patrick Groark, convicted by the trial judge hearing the case without a jury, simultaneous with the jury case, was sentenced to six months in the County Jail.

[3] R. refers to the original Record of Proceedings which is transcribed in twelve typewritten volumes comprising 6,730 pages and a thirteenth volume containing exhibits. Printing of an abstract was waived by order of the Illinois Supreme Court.

the evidence was offered during the trial, the petitioners objected to its admission on the ground that the evidence was unconstitutionally seized. (See *e.g.* R. 3533-3534, Vol. 6) Upon Writ of Error to the Supreme Court of Illinois, the Petitioners argued that the warrants should have been quashed and the evidence suppressed upon the following grounds: The admitted perjury of the complainant, Richard Morrison, in his affidavit for the warrant; the length of time elapsed between the offenses charged and the application for the warrant; the lack of specific description of the property to be seized; seizure of items not described nor mentioned in the warrant. (See Briefs and Arguments for Plaintiffs in Error, No. 36928, pp. 38-44; No. 36962, pp. 39-43). In its Answering Brief, the State abandoned the warrants and argued that the searches could be justified as incidents to lawful arrests. (See Brief and Argument for Defendant in Error, pp. 47-51). The Illinois Supreme Court ruled:

> "Because of obvious defects in the search warrants, the trial court held that the search and seizure of the property in question was justified, not on the basis of the search warrant, but on the basis that the searches and seizures were incident to lawful arrests. On this Appeal the State relies on the same reasoning.
>
> "It is well settled that defects in a search warrant are immaterial if the search can be otherwise justified. * * *." *People* v. *Brinn*, 32 Ill. 2d 232; and see Appendix "A", p. 9.

During trial Petitioners made daily motions for mistrials due to the almost daily headlined prejudicial publicity during the trial, which commenced on June 12, 1961 and concluded on August 23, 1961. These motions were denied.

Specific defense motions to inquire of the individual members of the jury separately as to the effect of the newspaper headlines and publicity upon each juror were denied. After the return of the jury verdict of guilty on

August 23, 1961, petitioners filed their written motion for a new trial on the ground, amongst others, that evidence came into their possession subsequent to the verdict that the jury not only read the newspaper articles in violation of the court's admonishment not to, but in deliberating upon their verdict, actually considered matters appearing in the newspapers which were inadmissible in evidence, thereby arriving at the verdict as a result of considering grossly prejudicial matters.

One of the petitioners, Faraci, moved that the court " . . . issue an order directing and limiting the newspapers of this community to fair reporting of events that occur in the courtroom . . . I think in fairness to the defendants, in fairness to the prosecution, in fairness to the court to insure a fair trial, the newspapers ought not to print matters which do not occur in court from the evidence". (R. 392, Vol. 1)

The motion was denied (R. 394, Vol. 1) although renewed several times (R. 566, Vol. 1; R. 643, Vol. 2).

At the conclusion of each day's trial session the trial judge admonished the jury not to read newspapers about the trial, listen to radio broadcasts or watch television and to remain free from outside influences. In addition, when the jurors returned from their homes to the courtroom for each day's trial session, the judge reminded the jurors of his previous admonition and inquired of the jurors collectively whether or not any of them read newspaper articles about the trial, watched television or listened to newspaper broadcasts. The form of inquiry by the trial judge requested that if any of the jurors had done so to raise her[4] hand. None ever did so.

[4] All twelve jurors were women.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I.

Did petitioners receive a fair trial in accordance with even the minimal standards of due process where the jurors were assailed each day by prejudicial newspaper headlines printed in **BLACK FACE BOLD STREAMER** across the front pages of the metropolitan press?

On the issue of prejudicial newspaper publicity occurring during a trial " . . . each case must turn on its special facts." *Marshall* v. *United States,* 360 U.S. 310, 312 (1959). In that case, the jurors were exposed " . . . to information of a character which the trial judge ruled was so prejudicial it could not be directly offered as evidence. The prejudice to the defendant is almost certain to be as great when that evidence reached the jury through news accounts as when it is part of the prosecution's evidence." pp. 312-313.

And Mr. Justice Frankfurter, concurring in *Irvin* v. *Dowd,* 366 U.S. 717 (1961) stated, p. 730:

> "This Court has not yet decided that the fair administration of criminal justice must be subordinated to any safeguard of our constitutional system—freedom of the press, properly conceived. The Court has not yet decided that while convictions must be reversed and miscarriages of justice result because the minds of jurors or potential jurors were poisoned, the poisoner is constitutionally protected in plying his trade."

It is customary to state that in American jurisprudence, a delicate balance has been achieved between the "right" of the public to full information on the one hand, and the right, on the other hand, of a criminal defendant to be

tried in court and not in the press headlines. Greater candor would probably compel the admission that substantial invasions of the rights of a defendant to a fair and orderly trial have frequently occurred.

Two alternatives are possible when flagrantly improper and prejudicial material is presented to the jurors in vindication of the supposed right in the public to become privy to every rumor surrounding a criminal trial.

On the one hand, a court can assume a superhuman objectivity in the jurors, and preserve this polite legal fiction at the expense of a criminal conviction predicated upon considerations other than those limited to the evidence.

The other alternative is to take any steps necessary—police trial or even contempt proceedings—to assure that the ultimate jury verdict will be the product of only those considerations which the law permits.

The second course may be unpopular. But the first course is unjust. And it is only the integrity of the judiciary which stands between unpopular defendants and the lynch mobs, "people's" courts, and vigilante activity which would necessarily eventuate if the courts should ever become lax in their assurances of a fair trial.

Dean Erwin Griswold has said:

> "For a good many years lawyers and the news media have been battling each other with great vehemence. The news media, on the one hand, champion 'the public's right to know' . . .
>
> "Lawyers, on the other hand, are concerned with the right to a fair trial, of which they are inevitably the guardians in a society such as ours. And the judges are sworn to uphold the Constitution and have the solemn obligation to see that no one is deprived of his life or liberty without due process of law. It

> takes little experience in the modern world to see that pre-trial publicity, *and many sorts of publicity during a trial*, are wholly inconsistent with the basic objective of a trial—which is not to entertain the public, nor even to let the public know what is going on, but the meticulous and dispassionate ascertainment of the truth. (Emphasis added.)[3]

The accusation against 8 police officers of Chicago that they conspired to commit a series of burglaries with a known burglar was the proper subject for newspaper reportage on a wide scale. Considering the charges made by the State, it could not be otherwise. And yet, unless lynch law is to be sanctioned, there must be control of the press in the only manner the courts have felt proper up to now—that is, the grant of a new trial.

This case, and the claimed deprivation of constitutional right, is a vexing problem which this court should now resolve. (As this court resolved that televising a trial in progress violates the due process clause. *Estes* v. *Texas*, ... U.S. ....., decided June 7, 1965). We submit that this court should now announce a rule that trial judges are permitted in some manner to prevent the publication of material prejudicial to a defendant *while a trial is going on*. All of the safeguards that have grown up to insure that only proper evidence reaches the jury for its consideration are meaningless if the emblazoned headlines in the metropolitan newspapers prejudice the jury. It is idle to believe that jurors are not impressed with the **LARGE BOLD BLACK TYPE OF STREAMER HEADLINES**, especially when all of the metropolitan newspapers print about the same prejudicial material.

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[3] "When Newsmen Become Newsmakers," by Dean Erwin Griswold; Saturday Review, Oct. 24, 1964, p. 24.

The trial was hotly contested and the evidence in sharp conflict. Although corroboration existed for the chief State's witness, Morrison, to support his accusations that the policemen aided him in his burglaries, each of the policemen-defendants testified on his own behalf, denied the accusations of Morrison and made explanations for their possession of items which were shown by the State to have been stolen.[6] Not only the issues of credibility but the issue of probabilities were to be decided by the jury. In the face of this, if the jury learned that the trial judge believed the State's witness Morrison, if they learned (falsely) that several of the defendants desired to plead guilty in return for leniency, and if they learned (falsely) that some of the policemen had wanted to kill the witness Morrison, no jury anywhere in this land could be but grossly prejudiced against the defendants.

It will be the State's argument, as it was the trial court's contention, that because the trial court admonished the jury almost daily not to read newspaper reports about the trial, watch television, or listen to television or radio reports about the trial, that, therefore, whatever appeared in the newspapers or on radio or television was irrelevant insofar as determining that the jurors were affected by inflammatory and prejudicial publicity.

This court should grant the writ to decide whether in a metropolitan community such as Chicago, a jury which was not locked up for the approximate three months of this trial could have remained "immaculate" as the trial court believed the jury to have been (even though a juror spoke to a newspaperman after the verdict and indicated she had read a newspaper story about Morrison's statement that the cops had planned to kill him).

---

[6] Some items seized from Faraci's home were shown not to have been stolen.

We believe that short of continuing the case for a reasonable time because of the prejudicial publicity as was requested by the defense (R. 378, Vol. 1), short of granting the defense motion for a change of venue to another county (R. 391, Vol. 1) and short of issuing orders to the publishers and editors of the metropolitan newspapers to report only that which occurred in court as requested by defense on a number of occasions during the trial (R. 392, Vol. 1), the trial judge delivered what admonishments he could to order the jurors not to read newspapers, watch television, listen to radio reports of the trial, or talk to anybody about the case.

At the end of nearly every day's court sessions, before adjournment for the following day, the court so admonished the jury.[7]

An example of the admonishment given the jury by the court is as follows:

> "Good morning ladies of the jury; we trust you had a pleasant weekend and you are returning to court this morning ready to continue the hearing of this matter in the same pure and uninfluenced manner, remembering that the court has admonished you and has spoken again and again of the importance of your

[7] The admonishments appear in the Record at 458 (Vol. 1), 465 (Vol. 1), 538 (Vol. 1), 592 (Vol. 1), 600 (Vol. 1), 771 (Vol. 2), 821 (Vol. 2), 988 (Vol. 2), 1079 (Vol. 2), 1144 (Vol. 2), 1250 (Vol. 3), 1354 (Vol. 3), 1444 (Vol. 3), 1714 (Vol. 3), 1886 (Vol. 4), 2194 (Vol. 4), 2418 (Vol. 4), 2518 (Vol. 5), 2837 (Vol. 5), 2932 (Vol. 5), 3090 (Vol. 5), 3353 (Vol. 6), 3542 (Vol. 6), 3659 (Vol. 6), 3817 (Vol. 7), 4139 (Vol. 7), 4268 (Vol. 7), 4435 (Vol. 7), 4500 (Vol. 7), 4803 (Vol. 8), 5087 (Vol. 8), 5243 (Vol. 9), 5446 (Vol. 9), 5568 (Vol. 10), 5774 (Vol. 9) 6059 (Vol. 10).

responsibility as jurors. The court again inquires, as it has before, if there are any of you who have read any articles about this case, or read any matters in any newspapers or listened to any broadcasts about it. If so, would you kindly raise your hand, please, thank you very much. Let the record show that no hands are raised." (R. 2849-2850, Vol. 5).

Because it was anticipated by defense counsel that the onslaught of prejudicial headline publicity would grow in intensity as the trial went on, a motion was made asking the court to " . . . issue an order directing and limiting the newspapers of this community to fair reporting of events that occur in the courtroom . . ."

"I think in fairness to the defendants, in fairness to the prosecution, in fairness to the court, to insure a fair trial, the newspapers ought not to print matters which do not occur in court from the evidence" (R. 392, Vol. 1). The motion was denied (R. 394, Vol. 1).

Appended to the Petition here as Appendix "B" are some of the headlines included in newspaper Exhibits (Volume 13 of the Record) which gave rise to daily and sometimes twice-daily motions for mistrial. The motions for mistrial because of the prejudicial newspaper publicity, the discussions and the reference to the particular newspaper exhibits claimed to be prejudiced are found at the Record references below.[8]

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[8] R. 471 (Vol. 1); 564 (Vol. 1); 566, (Vol. 1); 559 (Vol. 2); 608 (Vol. 2); 639-644 (Vol. 2); 992-31; (Vol. 2); 1147 (Vol. 3); 1252-1260 (Vol 3); 1357 (Vol. 3); 1755 (Vol. 4); 1889-1907 (Vol. 4); 2037 (Vol. 4); 2267 (Vol. 4); 2350 (Vol. 4); 2510 (Vol. 5); 2740 (Vol. 5); 2842 (Vol. 5); 2840 (Vol. 5); 2034 (Vol. 5); 3093 (Vol. 5); 3371 (Vol. 6); 3545 (Vol. 6); 3660 (Vol. 7); 3819 (Vol. 7); 4141 (Vol. 7); 4438 (Vol. 7); 4505 (Vol. 8); 4806 (Vol. 8); 5058 (Vol. 8); 5095 (Vol. 9); 5226 (Vol. 9); 5418 (Vol. 9); 5580 (Vol. 10).

Several decided cases have suggested that as to some of the issues respecting publicity, it would be the fairer practice to inquire of the jurors individually whether any publicity has reached them—even inadvertently. Such was the holding in *United States* v. *Accardo*, 298 F.2d 133, 7 Cir., where the court upheld defendant's contention that he was denied a fair trial for failure of the court to poll the jury individually in connection with prejudicial newspaper publicity. And see *Coppedge* v. *U.S.*, 272 F.2d 504, D.C. Cir.

Requests to inquire of the jurors individually were made several times. Defense counsel requested:

> "May I respectfully ask the court to inquire of the jury as to how many of the jurors received home delivery of any morning newspapers or home delivery of any afternoon newspapers. I respectfully ask the court to permit one, just one of the defense counsel to slightly examine the jurors with respect to their reading habits of newspapers."

The motion was denied. (R. 2499, Vol. 5).

The prejudicial headlines falsely reporting the defendants tried to kill the State's chief witness.

Another motion to inquire of the jurors individually whether any headlines reached their attention was made on the morning that the case was to be argued to the jury. Evidence had been concluded the previous Friday August 18, 1961 and arguments were to be made on Monday morning, August 21, 1961. A headline in the Chicago Tribune on Sunday, August 20, 1961, the day before the jury argument screamed on the front page:

'COPS TRIED TO KILL ME'

MORRISON'S REASONS FOR ACCUSING 8 (Ex. KKKK, Vol. 13; Appendix C).

On the same day the Chicago Sun-Times carried the headline:

'BABBLING BURGLAR TALKS AGAIN' — COPS PLANNED HIS DEATH, HE SAYS (Ex. FFFF, Vol. 13; Appendix C).

The motions for mistrial, the discussion, the colloquy appear at Record 5811, 5822, Vol. 10 and is as follows:

> "Mr. Cotsirilos (defense counsel): The sub-headline of this newspaper on the front page, Your Honor, is, **'COPS TRIED TO KILL ME.'** And on the right-hand column of the front page of that Tribune are the following words. **'MORRISON'S REASON FOR ACCUSING 8. BURGLAR'S VIEWS OF REFORM.'** By Robert Wiedrich."
>
> "Now, Your Honor, we were all collected here Saturday, the attorneys for both sides and Your Honor, in your chambers, for the purpose of reviewing these instructions, which was finally concluded and finalized today. And I believe at that time Mr. Echeles indicated to you that something is going on, Your Honor, that we feel ought to be stopped, and that something is that Morrison is being interviewed in the County Jail.
>
> "I know nothing about it and, I think as far as I know, no defense counsel knew anything about it.
>
> "I will state for the record I did not consent to this or agree to it, and I would have objected vigorously to any interview of a witness that could possibly be called to the witness stand . . .

"There was no court reporter, so we have no way of preserving for the record that Mr. Echeles brought to your attention the fact that Morrison was being interviewed at that time.

"Now, FFFF for identification, which I haven't read, and I haven't read the entire Tribune article, but I am sure it probably is quite similar to the Ray Brennan article that appears in the Sunday Chicago Sun Times, August 20, 1961, at page 3. And this article is entitled, **'BABBLING BURGLAR TALKS AGAIN,'** And in large letters, at least an inch high, **'COPS PLANNED HIS DEATH, HE SAYS.'** And the article is by Ray Brennan.

"In this article he says that of the eight policemen, two had planned his death, two had set him up in a burglary so that he would be killed.

• • •

"In addition, I have another edition of the Tribune that I got yesterday. The first one, Mr. Echeles got. And this article appears on page 3. 'Cops Wanted to Kill Me, Morrison Says.'

"I have read that article by Mr. Wiedrich. I didn't read the earlier edition. I would assume the two articles are identical. And he sets forth the same things again accusing two police officers, and it's easy to deduce that the two police officers are Patrick Groark and Allen Clements.

• • •

"The Court: Wouldn't you say that the totality of this would illustrate to anyone who would read it the unreliability of the man as a witness in this case?

"Mr. Cotsirilos: I would say that if anyone believes him, any one of these jurors, Judge, or anyone who has seen this article, if they have believed his story, as Your Honor—may I just finish this thought—as your Honor has indicated, and it was headlines two or three weeks ago, if anyone has read this newspaper and they read the headline of three weeks ago where 'Judge Says, "I Can Believe Thief," ' then, Judge, this article is irreparably damaging and destructive to the defendants' case.

"So I would say that if you put those two together, and there is one juror reading the articles and following this whole case, the defense just doesn't have a chance here. That's my conclusion, Your Honor." (R. 5811-5817, Vol. 10).

* * *

"Now, Your Honor, my motion today has an additional point to it. Each morning Your Honor has interrogated these jurors yourself. The defense would like to interrogate the jury on a *voir dire* examination and interrogate each of them individually in order to determine something more about the accessibility of newspapers; the methods of travel, the subscriptions that they might have for newspapers in their homes, how many people occupy the home, whether or not these newspapers are in or about their homes or in any homes that they have visited, and points of this nature.

"I could think of more, perhaps, precise and pointed questions if given a few minutes, and I am sure my co-counsel could also do the same.

"We would like to conduct this examination ourselves this morning, if Your Honor will permit us.

"And in addition to that, to this interrogation, we are making a motion for a mistrial and ask that a juror be withdrawn."

The court denied the motions as to all defendants. (R. 5818-5820, Vol. 10).

The prejudicial headlines reporting that the court announced it could believe the thief, Morrison.

Keeping in mind that the credibility of Morrison was sharply in issue, that he had confessed to over 50 burglaries, that he had admitted giving perjured testimony in a number of previous trials, that he had admitted cheating his own friends, and keeping in mind that a host of indictments were dismissed against him, it was error to the nth degree for the trial judge to announce that he could believe Morrison.

At the conclusion of the State's case each defendant made his motion for a directed verdict which motions were denied (R. 4442, Vol. 7).

In denying the motions, the court made comments with respect to the State's witness Morrison which were headlined in the Chicago Daily News in such manner to make it impossible for the jurors not to see it. In denying the motion, the judge said, "I can believe Morrison" or words to that effect. On Friday, August 4, 1961, the Chicago Daily News carried a banner headline emblazoned across fully a third of the front page:

"**COP JUDGE DECIDES: 'I CAN BELIEVE THIEF'.**" (Exhibit "PPP," Vol. 13; Appendix C.)

And then followed a story of the judge's comments in denying the motion which he made outside the presence of the jury.

Of course, had the court stated directly to the jury that he could believe Morrison such invasion of the province of the jury would require a new trial. It is necessary, therefore, that this court look at Exhibit PPP (reproduced in Appendix C) to determine whether the triple headline covering about a third of the front page of the Chicago Daily News could escape the glancing attention of any of the jurors as they went from the courtroom to their homes.

If no other newspaper article prejudiced the jury than this one, we submit it would be error. Do the jurors go to their buses, their automobiles, the elevators, the subways, blindfolded? Do the jurors sit in buses, subways or elevated trains with their eyes closed? They themselves need not have purchased a paper or even read the articles. If just one juror accidentally observed the headlined evaluation placed upon Morrison by the court, could there be a fair trial where the contested issue in the case was the credibility of Morrison?

The defense had on a number of occasions moved the court to use its inherent supervisory powers to control the newspapers (R. 566, Vol. 1).

And again:

> "Mr. Echeles (defense counsel): The defendant Faraci renews his motion, made almost daily, that the Court exercise judicial power in controlling the reportage of the events that occur in and connecting with this trial, limiting the press only to fair reportage of events that occur only in this court, because events such as—or documents such as Mr. Bellows pointed out to Your Honor, is just the first of statements of an avalanche of prejudicial material and that which will come into the newspapers as added material, as explanatory material in order to make the stories

for the newspaper reportage of the trial palatable to the readers. When it does this in order to increase its sales, it prejudices immediately the rights of the defendants to a fair trial.

"Your Honor has asked me to brief the point. I say to Your Honor that there is no deciding case on this point. And so far as I know, no Court has exercised such power. That is not to say that the Court cannot exercise such power. Someone must do it for the first time. I urge Your Honor to do it. Your Honor need not override the very important First Amendment to the Constitution establishing a free voice in this country. That is important. And the same people to whom the free voice is important look to the Court for fair trials in accordance with the other provisions of the Constitution.

"I renew the motion previously made.

"The Court: The Court will take your renewed motion under advisement and inquire of the jury." (R. 608-9, Vol. 2).

The defense again proposed that the court supervise the newspapers during the trial because of the "wild imagination" of the reporters (R. 643, Vol. 2), and again the Court refused to do so.

The prejudicial headlines falsely reporting offers to plead guilty.

The most damaging of the prejudicial publicity stories falsely headlined that some of defendants had offered to plead guilty in exchange for leniency. No such offer was ever made. Three of the Chicago newspapers headlined on their front pages in bold black print, together with pictures of two of the defendants, Faraci and Brinn, as follows:

2 COPS OFFER GUILTY PLEA (Chicago Sun-Times, July 13, 1961, Exhibit BB, Vol. 13; Appendix C).

2 COPS ON TRIAL SEEK DEAL
OFFER GUILTY PLEA IN TRADE FOR LENIENCY (Chicago Tribune July 13, 1961, Exhibit CC; Appendix C).

COP TRIAL JUDGE: NO DEALS! DEFENSE LOSES MISTRIAL PLEA ON BIAS CLAIM (Chicago American, July 13, 1961, Exhibit EE; Appendix C).

Motions were made for a mistrial predicated on the appearance of these headlines. (R. 1889-1908, Vol. 4).

It was pointed out that the articles contained such highly prejudicial material that any warning the judge could give the jury would be ineffective. The articles stated, "At least 2 of the 8 defendants in the Summerdale police trial have offered to plead guilty in exchange for leniency, it was learned yesterday." Such was the lead paragraph. The newspaper articles mentioned defendants Faraci and Brinn as the two. Their pictures were published on the front page.

One defense lawyer advised the court he was called at 1:30 in the morning by reporters from both the Sun Times and Chicago Tribune and he denied on behalf of his client, Faraci, that any such "deal" was mentioned or thought about. The special prosecutor mentioned that he and the other special prosecutors were called by the newspapers at 1:30 and that he had no comment to make to them.

A long discussion was had with the court wherein it was shown that the Chicago Tribune also headlined that **"2 COPS ON TRIAL SEEK DEAL"** in print 1½" high covering the entire width of the newspaper. It was pointed out that the radio commentators in broadcasts mentioned the possibility of such an event.

It was argued to the court by defense counsel that notwithstanding the court admonition to the jury, and even though no juror raised her hand in response to the court's questions whether they had heard or read anything that "This jury group of women are not deaf, dumb and blind. It is impossible for them not to see the headlines of a newspaper in a community such as Chicago, coming to court, in their homes, if their husbands or their families, or their relatives, have a newspaper, assuming even that there is no conversation. They don't have to read it. They can see it three to four feet away, the picture of Faraci, **'TWO COPS SEEK DEAL IN TRIAL'** " (R. 1906, Vol. 4).

Counsel for Faraci stated, "I may remind the court that Faraci and this lawyer from the inception of this trial has asked the court to use its supervisory powers to insure the defendants a fair trial, to order the newspapers of this community through its publishers and through its managing editors, that they not be permitted to publish anything except fair reportage of what occurs in open court and on the record. I made this demand for about two weeks. The court felt that the court could not precensor newspapers, and felt that the First Amendment to the Constitution superseded the constitutional right of a defendant to a fair trial. I respectfully disagree. The right of a defendant to a fair trial supersedes the right to have irrelevant (*sic*) journalism irresposibly running rampant over a defendant." (R. 1906-1907, Vol. 4).

The State responded, "But there isn't any showing of any injury. The jury has not returned a verdict of guilty. For all that appears the jury may find these defendants not guilty." (R. 1913, Vol. 4).

It found otherwise.

These headlines were the subject matter of a discussion in one of many symposiums held to discuss prejudicial news reporting on criminal trials.

A conference on prejudicial news reporting on criminal cases was conducted by the Northwestern School of Law, together with the Medill School of Journalism and the proceedings were published under the title, "Free Press—Fair Trial," Northwestern University School of Law, 1964. In the introductory remarks of the conference held May, 1962, Professor Fred E. Inbau stated that the object of the conference was to explore the free press—fair trial conflict and to attempt to resolve it. He set out certain glaring newspaper reportage which affected defendants' rights adversely. He stated to the conference, pp. 1-2:

> "During the course of the (police) trial[9] two of Chicago newspapers carried on their front page headlines you have before you.
>
> **'2 COPS OFFERED DEAL IN TRIAL'**
> **'2 COPS ON TRIAL SEEK DEAL'**
>
> "Under these headlines it was reported in considerable detail that two of the defendants offered to plead guilty in exchange for light sentences. Any such offer to deal, of course, would not have been discussed in the presence of the jury, and it should not have come to their attention by any other means.
>
> "The jurors in this case were not 'locked up;' they were allowed to go home at night with the customary admonition not to read or listen to anything about the case. However, the jurors—as is true with most of us—have to use public transportation facilities in getting to and from the courtroom. They ride the

[9] The reference was to the case at bar.

buses and elevated trains, and on those buses and trains there are many persons reading or holding newspapers bearing the headlines to which I have just referred.

• • •

"The troublesome thing about this case of the accused policemen, and about other cases like it, is that even if the jurors conscientiously follow the judge's instructions not to read about the case, they could not avoid seeing the headlines. *They did not have to read the details; the headlines were enough.*" (Emphasis added).

The law in connection with prejudicial publicity during a trial was summarized by Mr. Justice Douglas in an article, "The Public Trial and the Free Press", 46 A.B.A. Journal (August, 1960) at p. 841:

"Passion and public outcry, aided and abetted by the press, have at times so possessed a community and its courthouse as to make the trial a mere mockery of justice. When that has happened a new trial has been granted. *Moore* v. *Dempsey*, 261 U.S. 86. A mistrial was recently declared for that reason in a widely publicized prosecution of Americans charged with attempting to cause insubordination in our Armed Forces in Korea. *United States* v. *Powell*, 171 F. Supp. 202.

"At other times the press has been the vehicle for getting into the jury room evidence against the accused which no judge would admit at the trial. Then a new trial has also been granted. *Marshall* v. *United States*, 360 U.S. 310. As the court in *Coppedge* v. *United States*, 272 F. 2d 504, recently noted, a newspaper may properly print what jurors should not know. A defendant, however, is on trial for a specific crime, and is not to be condemned, imprisoned, or executed for what laymen would call his bad character

or reputation. See *Michelson* v. *United States*, 335 U.S. 469, 475-476. Rules of evidence are designed to narrow the issues and protect an accused against prejudice. Judges, not newspaper reporters, fashion and supervise those rules.

"At other times the papers may so beat the drums of prejudice and passion as to make it doubtful whether a trial in the local courthouse can be fair to a particular defendant. See *Shepherd* v. *Florida*, 341 U.S. 50; *Stroble* v. *California*, 343 U.S. 181, 191-195. Local feelings may run so high as to necessitate a change in venue or a continuance to allow emotions to subside.

"The point is that our remedy for excessive comment by the press is not the punishment of editors, but the granting of new trials, changes in venue, or continuances to parties who are prejudiced."

In *Marshall* v. *United States*, 360 U.S. 310, 312-313, this Court stated:

"We have here the exposure of jurors to information of a character which the trial judge ruled was so prejudicial it could not be directly offered as evidence. The prejudice to the defendant is almost certain to be as great when that evidence reaches the jury through news accounts as when it is a part of the prosecution's evidence . . . It may indeed be greater for it is not then tempered by protective procedures.

"In the exercise of our supervisory power to formulate and apply proper standards of enforcement of the criminal law in the federal courts . . . we think a new trial should be granted."

In *Delaney* v. *United States*, 199 F.2d 107, 1 Cir., "The newspaper publicity was characterized by flamboyant, front page headlines in large, heavy type, covering colorful feature stories emphasizing the more striking aspects of the testimony. This was supplemented by radio and television exploitation of the same material. Naturally, due to local interest, the publicity was intensified in the Boston

area, but it was also carried by the big press associations far and wide throughout the nation, for the generalized charges of corruption in the Internal Revenue Bureau had elicited public interest and concern throughout the nation." (P. 111)

The Court stated, pp. 112-113:

> "No doubt the district judge conscientiously did all he could, both in questions he addressed to the jurors at the time of their selection and in cautionary remarks in his charge to the jury, to minimize the effect of this damaging publicity, and to assure that defendant's guilt or innocence would be determined solely on the basis of the evidence produced at the trial. But as stated by Mr. Justice Jackson, concurring, in *Krulewitch* v. *United States,* 1949, 336 U.S. 440, 453, 69 S. Ct. 716, 723, 93 L. Ed. 790: 'The naive assumption that prejudicial effects can be overcome by instructions to the jury, * * * all practicing lawyers know to be unmitigated fiction.' And see Note, Controlling Press and Radio Influence on Trials, 63 Harv. L. Rev. 840, 842-43 (1950). One cannot assume that the average juror is so endowed with a sense of detachment, so clear in his introspective perception of his own mental processes, that he may confidently exclude even the unconscious influence of his preconceptions as to probable guilt, engendered by a pervasive pre-trial publicity. *This is particularly true in the determination of issues involving the credibility of witnesses.*
>
> "How best to protect accused persons from the prejudicial effect of newspaper publicity has been a matter of immense concern. In England, such publicity is largely curbed by the free use of the power of the courts to punish for contempt. See Goodhart, newspapers and Contempt of Court in English Law, 48 Harv. L. Rev. 885 (1935). See also materials collected in appendix to opinion of Frankfurter, J., on denial of certiorari, in *Maryland* v. *Baltimore Radio Show, Inc.,* 1950, 338 U.S. 912, 921 *et seq.,* 70 S.Ct. 252, 94 L. Ed. 562. In this country the course of

treatment has been different. So far as the federal courts are concerned, there are important limitations upon the power to punish summarily for contempt. See 18 U.S.C. § 401; *Nye* v. *United States,* 1941, 313 U.S. 33, 61 S. Ct. 810, 85 L. Ed. 1172. More fundamentally, it has been thought that this modern phenomenon of 'trial by newspaper' is protected to a considerable degree by the constitutional right of freedom of the press. See *Bridges* v. *California,* 1941, 314 U.S. 252, 62 S. Ct. 190, 86 L. Ed. 192; *Pennekamp* v. *Florida,* 1946, 328 U.S. 331, 66 S. Ct. 1029, 90 L.Ed. 1295; *Craig* v. *Harney,* 1947, 331 U.S. 367, 67 S. Ct. 1249, 91 L. Ed. 1546. On this view there has been some fatalistic acceptance of 'trial by newspaper', however unfortunate, 'as an unavoidable curse of metropolitan living (like, I suppose, crowded subways).' Frank, J. dissenting, in *United States* v. *Leviton,* 2 Cir., 1951, 193 F. 2d 848, 865. The courts are then limited to doing what they can to insulate jurors from the prejudicial effect of such publicity, as by cautionary instructions or by the granting of continuances, or in some cases granting a change of venue. Perhaps the Supreme Court has not spoken its last word upon this vexing subject." (Emphasis added.)

The only remedy to prejudicial publicity invading the rights of a defendant to a fair trial is to grant a new trial. In *Shepherd* v. *Florida,* 341 U.S. 50, discussing the rights of newspapers under the First Amendment to print stories of criminal trials, your Honors commented, pp. 52-53:

> "But if freedoms of press are so abused as to make fair trial in the locality impossible the judicial process must be protected by removing the trial to a forum beyond its probable influence. Newspapers in the enjoyment of their constitutional rights, may not deprive accused persons of their right to a fair trial. These convictions, accompanied by such events, do not meet any civilized conception of due process of law."

And see "The Right to a Fair Trial," by Lewis F. Powell Jr., President of the American Bar Association; 51 American Bar Association Journal 534, June, 1965.

II.

Petitioners demonstrated that the jurors were actually infected by the prejudicial newspaper headlines. A hearing should have been held in connection with this matter, the petitioners having reasonably so moved in a post-trial motion for a new trial.

DEFENDANTS' POST TRIAL MOTION ON THE GROUND THE JURY READ PREJUDICIAL NEWSPAPER ARTICLES

Defendants filed post trial motions to vacate the judgment and for a new trial on the ground that the jury was prejudiced by having read newspaper articles. (R. 6701, Vol. 11) It was pointed out to the court in a petition, and not denied by the State, that an article appeared in the Chicago Sun Times, a day after the jury verdict was rendered in which the newspaper reporter, a Mr. William Baldwin, quoted one of the jurors as stating in considering the verdict one of he jurors had commented that one of the defendants, Brinn, had warned Morrison that some of the others had set up a trap to get him killed (R. 6704, Vol. 11) It was further pointed out that such statements by Morrison that some of the policemen were going to kill him was reported in headline fashion in the Chicago Sun Times on the night and morning before final arguments were to take place. Defendants asked the court to hold a hearing and to examine the reporter Baldwin who was present in court.

It was pointed out to the court that had the juror who allegedly had the conversation with Baldwin followed the instruction of the court, she could not have read the newspapers. But from the newspaper story of Baldwin, apparently, she either had read the newspapers or obtained the information from sources otherwise which was equally prejudicial.

It was the further motion that the jurors be subpoenaed in order that they may be interrogated as to whether any one of them was interviewed by Mr. Baldwin and had said the things he stated in his newspaper article (R. 6715, Vol. 11).

And it was pointed out to the court that William Baldwin, the writer of the newspaper article who was in court, had advised one of defense counsel that he would not speak to the lawyer, but he would answer questions in court if he were ordered.

The motions were denied.

In explaining its denial of the motion to hold a hearing the court stated that even assuming the facts in the article were true—that is, that a juror had in fact read the newspaper article regarding the plot of the policemen against Morrison's life—that it made no difference in its decision because the ". . . evidence is overwhelming and mountainous" (R. 6721, Vol. 11).

We submit that in this country any man on trial, no matter how conclusive the evidence against him may appear, is entitled to a fair trial and to have his case determined by a jury without the interference of unauthorized matter.

The Illinois Supreme Court really did not disagree with this contention. It only said that - - - "the defendants failed to offer any proof, either by witnesses or affidavits, to support the pure hearsay contained in the article." (32 Ill. 2d 232, and Appendix "A", p. 7.)

But the Record is otherwise.

The author of the article, one William Baldwin, was in court. (R. 6715-21, Vol. 11.) The judge was advised

Mr. Baldwin would not speak unless ordered so to do by the court.[10] The court declined, because in its view it made no difference whether the jurors read the prejudicial articles, the "evidence [being] overwhelming and mountainous." (R. 6721, Vol. 11)

The Illinois Supreme Court did not opine whether or not the trial judge's ruling was correct; that is, that even if the jurors had not complied with the daily admonishment, that it could make no difference in the outcome of the trial.

Supposing the trial judge granted the defense request and ordered Baldwin, who was in the court's presence, to answer questions of counsel. And supposing Baldwin had stated he interviewed jurors and they advised him that they discussed the plot on Morrison's life having read about it in the newspapers? Would the Court's opinion be the same?—or different?

III.

The command of the Fourth Amendment that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, * * *" made applicable to the States through the Fourteenth Amendment by the Court's decision in *Mapp* v. *Ohio,* 367 U.S. 643, is ripe for further implementation by the express revivification of *Trupiano* v. *United States,* 334 U.S. 699. Reestablishing *Trupiano* requires the overruling of *United States* v. *Rabinowitz,* 339 U.S. 56. This case presents the ideal vehicle and the best argument for so doing.

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[10] The function of a subpoena is to compel attendance in court. No *defense counsel* can compel testimony. Only a court can. The witness was waiting to be compelled.

The "Trupiano argument" that, in testing the validity of a search, the court must first consider whether it was reasonable to procure a search warrant, was made to the Supreme Court of Illinois, but no decision was rendered upon the claim. By implication, that Court followed *United States* v. *Rabinowitz,* 339 U.S. 56, in deciding that the challenged searches could be sustained as incidents to lawful arrests without warrants despite the confessed invalidity of the search warrants which were obtained. In some respects the argument that first consideration must be given to whether it was reasonable to obtain search warrants comes *a fortiori* in the present case. High ranking state officials, including the State's Attorney and First Assistant State's Attorney of Cook County, decided to and did obtain search warrants in this case, and they did so after a considerable discussion, not as to whether warrants were at all necessary but, as to whether search or arrest warrants were more efficacious. (R. 126-127, Vol. 1) Time was not a concern; there was no worry that the defendants or the evidence which was sought would disappear. The crimes charged had occurred over a period of time ranging from ten to sixteen months before. The accusor, Richard Morrison, had been in custody for several months prior to making his accusations, (Tr. 986, Vol. 2), and none of the defendants had fled the jurisdiction or taken any other steps to secure themselves from possible disclosure. As witnessed by the fact that night time search warrants were issued by two judges of Cook County, judges were available to issue warrants. And, of course, the fact that warrants were obtained demonstrates that the state officials had time and opportunity so to do. Only after the manifest invalidity of the warrants that were obtained and used was demonstrated to the courts did it become necessary for the State to advocate that the warrants could be dispensed with.

This Court, over the past several years, has repeatedly suggested that *United States* v. *Rabinowitz*, 339 U.S. 56, has been overruled. See *e.g.*, *Jones* v. *United States*, 357 U.S. 493. When the Court overturned the search and seizure in *Chapman* v. *United States*, 365 U.S. 610, Mr. Justice Frankfurter, concurring, was moved to comment:

> "The reasoning by which the Court reaches its result would be warranted were *Trupiano* v. *United States*, 1948, 334 U.S. 699, 68 S. Ct. 1229, 92 L.Ed. 1663, still law. While the Court does not explicitly rely on it, underlying the present decision is the approach of Trupiano. That decision was a short lived deviation from the course of decisions preceding it and was specifically overruled by *United States* v. *Rabinowitz*, 1950, 339 U.S. 56, 66, 70 S.Ct. 430, 435, 94 L.Ed. 653. Since the Rabinowitz case expresses the prevailing view, the decision in this case runs counter to it. The Court does rely on *Johnson* v. *United States*, 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed. 436, although that case was severely impaired by Rabinowitz, * * * *" *Chapman* v. *United States*, 365 U.S. 610, 618; and see Mr. Justice Clark's dissent, at pages 621, 623.

Later, in his same opinion, Mr. Justice Frankfurter gave his reasons for joining in the judgment of the Court, although in his estimation it overruled *Rabinowitz*:

> "* * * I do so on the basis of the views set forth in my dissents in *Davis* v. *United States*, 328 U.S. 582, 594, 66 S.Ct. 1256, 1262, 90 L.Ed. 1453; *Zap* v. *United States*, 328 U.S. 624, 630, 66 S.Ct. 1277, 1280, 90 L.Ed. 1477; *Harris* v. *United States*, 331 U.S. 145, 155, 67 S.Ct. 1098, 1103, 91 L.Ed. 1399; *United States* v. *Rabinowitz*, *supra*, 339 U.S. at page 68, 70 S.Ct. at page 445. As these opinions elucidate, the Fourth Amendment incorporates a guiding history that gives meaning to the phrase 'unreasonable searches and seizures' contained within it far beyond the meaning of

> the phrase in isolation and taken from the context of that history and its gloss upon the Fourth Amendment. The Amendment in its entirety in the setting of that history decidedly does not leave the phrase 'unreasonable searches and seizures' at large." *Chapman* v. *United States, supra,* 365 U.S. at page 619.

More recently, in *Wong Sun* v. *United States,* 371 U.S. 471, the Court questioned the continuing validity of the *Rabinowitz* doctrine, or at least the prevalent doctrine that no consideration whatsoever need be given the question of whether it was reasonable to procure a warrant when a search is made without a warrant. *Wong Sun* v. *United States,* 371 U.S. 471, 479 (note 8). Mr. Justice Douglas, concurring, gave the problem more precise attention:

> "While I join the Court's opinion I do so because nothing the Court holds is inconsistent with my belief that there having been time to get a warrant, probable cause alone could not have justified the arrest of petitioner Toy without a warrant.
>
> "* * * [My views have] been earlier stated by Mr. Justice Jackson, writing for the Court in *Johnson* v. *United States,* 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed. 436 (another narcotics case):
>
> > 'The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without

> a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers.' pp. 13-14, 68 S.Ct. p. 369. And see *Chapman* v. *United States*, 365 U.S. 610, 615-616, 81 S.Ct. 776, 779, 5 L.Ed. 2d 828.

> "The Court finds it unnecessary to reach that constitutional question. I mention it only to reiterate that the *Johnson* case represents the law and is in no way eroded by what we fail to decide today." *Wong Sun* v. *United States*, 371 U.S. 471, 497-498.

And the Court has, only last term, unquestioningly recognized the validity of Mr. Justice Jackson's reasoning. In *Aguilar* v. *Texas*, 378 U.S. 108, the Court required that affidavits for search warrants based on hearsay inform the magistrate of the underlying circumstances from which the informant concluded that the property to be seized is located upon the property to be searched and "some of the underlying circumstances from which the officer concluded that the informant * * * was 'credible' or his information 'reliable'."

> "Otherwise, 'the inferences from the facts which lead to the complaint' will be drawn not 'by a neutral and detached magistrate,' as the Constitution requires, but instead, by a police officer 'engaged in the often competitive enterprise of ferreting out crime.' *Giordenello* v. *United States, supra*, 357 U.S. at 486, 78 S.Ct. at 1250; *Johnson* v. *United States, supra*, 333 U.S. at 14, 68 S.Ct. at 369 or, as in this case, by an unidentified informant." *Aguilar* v. *Texas*, 378 U.S. 108, 114-115.

The sentiment that a magistrate must be interposed between the information in the hands of the police and the action of the police based on that information, wherever reasonable, still finds favor in many of the lower

federal courts. For example, in *United States* v. *Lassoff*, E.D. Ky. 1957, 147 F.Supp. 944, the government sought to justify a search of the defendant's premises, after a search warrant had been adjudged invalid, on the basis that it was incident to a lawful arrest based upon probable cause. The court decided, however, that the circumstances of the case did not excuse the agents' failure to obtain a valid warrant and that the arrest was not in fact based upon probable cause. The attitude that the first test under the Fourth Amendment is always to determine whether procurement of a search warrant was reasonable also found expression in *Harris* v. *United States*, 6th Cir. 1963, 321 F.2d 739. There, federal agents admittedly had sufficient information to justify their making an arrest without warrant based on probable cause. They made no effort to obtain a search warrant. Instead, they went directly from their office, where they had received their information, to the defendant's home. They forcibly entered the premises, arrested the defendant, and, upon searching, found the narcotics which they had been told was hidden on the premises. The lower court sustained a petition to suppress the evidence and the United States Court of Appeals for the Sixth Circuit affirmed, holding that,

> "An arrest may not be used as a pretext or subterfuge for making a search of premises without a search warrant where ordinarily one would be required under the Fourth Amendment. If, in fact, the primary purpose of forcibly entering a person's home is to search for evidence with which to convict him of crime, the evidence so obtained is not admissible in court. [Citing cases]." 321 F.2d at page 741.

The instant case clearly illustrates the present ineffectiveness of the Fourth Amendment's command that valid search warrants be obtained for searches of dwelling

places. The right to make a search incident to a lawful arrest without warrant has been subverted, in this case, into a tactic whereby obviously defective warrants are used to gain entrance into homes and then discarded when their validity is tested in court. If the right to search incident to a lawful arrest is permitted to expand to the limits exemplified by this case, without any qualifying test as to the reasonableness of not first obtaining valid search warrants, a valid search warrant will never be required. Even in those cases where procurement of a warrant is reasonable, and a warrant is obtained, the validity of the warrant will be immaterial. For example, in *Aguilar* v. *Texas* 378 U.S. 108, decided by Your Honors last term, the requirement to state in the complaint for a warrant those circumstances from which the informant concluded that the property to be seized is located upon the property to be searched and "some of the underlying circumstances from which the officer concluded that the informant * * * was 'credible' or his information 'reliable,' " is, in effect, abrogated by the Illinois decision in this case. The officers, as a result, once their warrant is challenged, need not rest their search on the basis of the warrant, but may state all that was in their minds at the time of the "arrest", albeit these facts may not have been stated in the complaint for the warrant. Thus, their reasons for believing that the informant was reliable and their or his reasons for believing that the property to be seized was on the property to be searched, while not stated in the complaint as required by *Aguilar* v. *Texas*, 378 U.S. 108, will suffice to sustain a search incident to an arrest without warrant. Of course, "* * * a neutral and detached magistrate, as the Constitution requires," will not be given the opportunity to determine if the circumstances justify an invasion of privacy, but that is the

"logical" result, illustrated by this case. This result, in turn, stems from the fact that since *United States* v. *Rabinowitz,* 339 U.S. 56, it has not been necessary to inquire first into the reasonableness of proceeding without a search warrant. The result would not occur if *Trupiano* v. *United States,* 334 U.S. 699, and its requirement that, where reasonable, officers must first procure valid search warrants were revivified.

IV.

The dismal prospect of the Court's decision in *Aguilar* v. *Texas,* 378 U.S. 108, being circumvented and, in effect extinguished by the tactic employed in the present case is substantially aided by the pronouncement of the Illinois Supreme Court that,

> "It is well settled that defects in a search warrant are immaterial if the search can be otherwise justified." (Appendix "A", p. 9)

Thereafter the Court cited a number of decisions to support this point of view, none of which, it is submitted, justify the conclusion drawn from them.

In *People* v. *McIntyre,* 15 Ill.2d 350, the police officers who made the arrest of the defendant and searched his premises, the basement of *a public tavern,* entered through an *open door* and *saw* several persons including the defendant, engaged in the commission of a crime prior to the arrest, search and seizure. The Court properly held that the officers saw an offense being committed in their presence and had a right to make an arrest on view and conduct a search incident to that arrest. Implicit in the Court's decision is the further holding that the police officers had not entered the public premises illegally. Thus, the invalid warrant which the officers had was not the means whereby they entered the premises and seized the property.

In *United States* v. *Gearhart*, 4th Cir. 1964, 326 F.2d 412, the defendant was detained while driving his automobile and brought back to the local sheriff's office. There, invalid arrest and search warrants were obtained and served on the defendant. The defendant was searched, as was his automobile, after the service of the warrants. The court held that the officers who arrested the defendant and searched his person and car were possessed of sufficient information at the time to make an arrest without warrant.[11] The searches which followed were incidental to the arrest and permissible.[12]

Marron v. *United States*, 275 U.S. 192 (1927), relied upon heavily by the Court of Appeals in *United States* v. *Jones*, 7th Cir. 1953, 204 F.2d 745, is clearly inapplicable. There, federal agents entered the defendant's premises, a tavern, pursuant to a search warrant, and searched for and seized certain items, some of which were described in the warrant and some of which were not. At the time of entry, the agents viewed violations of the National Prohibition Act. The items which were described in the warrant were listed on the return made thereto; the other items were not. The defendant petitioned to suppress only the items which were not described in the warrant. The warrant was not challenged nor was it held invalid. The Court held that the seizure of items not described in the warrant was not authorized by the warrant. The seizure of these items was justified, however,

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[11] Such an arrest and search could have taken place on the highway. 326 F.2d at 414.

[12] The search of the automobile would now be suspect. *Preston* v. *United States*, 376 U.S. 364; *Rent* v. *United States*, 5th Cir. 1954, 209 F.2d 893.

as an incident to an arrest made by agents who were lawfully upon the premises pursuant to the valid warrant and who, while on the premises, viewed a crime being committed in their presence.[13] *Marron* v. *United States*, 275 U.S. 192, 198-99 (1927).

In *Jones* v. *United States*, 7th Cir. 1953, 204 F.2d 745, the Government agents had procured an invalid search warrant for the search of the defendant's premises. At about the same time an indictment had been returned and a bench warrant had issued for the arrest of the defendant. The agents, armed with the search warrant and with knowledge of the existence of the arrest warrant, went to the defendant's premises and arrested him as he emerged from his apartment. The agents searched the defendant and found narcotics and other evidence upon him. He then took the agents to his room where they found further evidence.[14] Upon rehearing, the court suggested that were the matter to be heard on the merits they would rule that the search and seizure were incident to a valid arrest.

In none of the foregoing cases was the home of the defendant entered pursuant to an invalid search warrant, only to have the prosecution then claim, after entry, that the search and seizure were incident to a lawful arrest. The facts in the present case demonstrate that such was the procedure here. On the evening of January 14, 1960,

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[13] Subsequent decisions point up the validity of the distinguishing feature of a crime being committed in the officers' presence. See, *United States* v. *Lefkowitz*, 285 U.S. 452 (1932); *Go-Bart Importing Co.* v. *United States*, 282 U.S. 344 (1931).

[14] Again, *Preston* v. *United States*, 376 U.S. 364, would cause concern as to the validity of this search.

a select group of Chicago police officers and state's attorney's investigators met at a downtown hotel in Chicago. These officers were divided into "raiding teams," and each team was given a sealed envelope which, the teams were told, contained instructions for the night's activities. The envelopes were not to be opened until after the teams left the hotel. (R. 157, Vol. 1) A "State's Attorney's Investigator" assigned to one team[15] testified that:

> "The purpose [after leaving the Conrad Hilton at approximately 9:30 P.M.] was to go somewhere to the northside of Chicago, or the northern section. At that time we did not know, we had not opened the envelope. Our instructions were to open them once we were under way, and to proceed to whatever address was indicated.
>
> • • •
>
> "We were given to understand [at the meeting at the Hilton] it was an *investigation,* and that our instructions would be in the envelope. As far as we were concerned, as far as what we were to do to that point forward we would learn from the contents of the envelope. [Emphasis added.]
>
> • • •
>
> "[When I opened the envelope after we left the hotel] I found a search warrant for the address that you mentioned previously. [There were no other instructions, papers or documents in the envelope.]" (R. 157-159, Vol. 1)

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[15] Investigator Kaiser was the only one of the "raiders" who testified at the pre-trial hearing to suppress evidence. The trial court "cut off all further presentation of evidence and argument by counsel" on June 6, 1961, to enable the cause to proceed to trial the following Monday. (R. 352-353, Vol. 1) Kaiser said that to his knowledge no team was instructed differently than his. (R. 217, Vol. 1)

Captain James Hackett, a top echelon police official to whom Richard Morrison's statement was read, and who was in charge of the "raids" on the night of January 14, 1960, testified somewhat differently:

> "We told them [the raiding teams] that this man in custody had made a statement involving some of our Chicago Police Officers. That after they left here they were to go with the State's Attorney's men and they were to go north until about Lawrence Avenue along the Drive and there * * * the State's Attorney's men could open the envelope because they didn't even know for sure where they were going. They were in sealed envelopes.
>
> "The Court: Did anyone, at that time or before that, describe in any detail the charges that this man Morrison had made?
>
> "The Witness: Yes, we told them that there were police officers that were accused of having aided this man in the committing of burglaries and receiving and dividing up the loot from the burglaries.
>
> "We told them the nature of the loot.
>
> * * *
>
> "We told them that it would be in the nature of draperies, furniture, outboard motors, tires, television sets, radios and along those lines." (R. 137, Vol. 1)
>
> * * *
>
> "I told them about the man having made the statement about the police officers that were involved in burglaries and the receiving of stolen property. That we had gotten ten search warrants for them. That they were to go out that they were to synchronize their watches, which we did right there. * * * I said, 'Now, exactly when your watch reads ten thirty, you are to be in front and back of these places you are to go in and keep these premises in a status quo, and exactly as

you find them until we get there. The only person you are to allow in there, that isn't home at the time, would be the police officer if he is working or at the show or out and the immediate family that lives there. You are not to allow anybody to make a phone call out of the premises until Chief Newey arrives and the property is identified by Richard Morrison who will be with Newey'." (R. 139, Vol. 1)

In his last several sentences, Captain Hackett positively established that the raiding officers were to enter the homes of the individual defendants only to serve the warrants, else how could they enter a home where the "arrestee" was absent. *Cf. Jones* v. *United States,* 357 U.S. 493, 498-499; *Preston* v. *United States,* 376 U.S. 364. He further established that the searches conducted in these homes were not to be incident to arrests. The arrests were to be incident to the subsequent searches and identifications by the "follow-up party" consisting of Hackett, Richard Morrison and Paul Newey, the Chief Investigator for the State's Attorney.

If what was said to the raiding officers does not establish that their sole function was to serve warrants, then their actions clearly show that that was their function. Upon the authority of the warrant a raiding team entered the home of Petitioner Sol Karras, even though he was not present. Once inside the home the officers waited for Karras to return. When he did, they informed him of the warrant and then proceeded to search the home. (R. 69-75, Vol. 1) Defendant Mulea, not a Petitioner in this Court, was met on the street outside his home by a raiding team. He admitted them to his house where they announced their purpose pursuant to the warrant and conducted a search. (R. 296, Vol. 1) The raiding officers entered the home of Petitioner Alan Brinn through an unlocked front door; once inside the home, they were met by Brinn. They then announced their entry pursuant to the warrant and

commenced to search. (R. 162, Vol. 1) The team assigned to the home of Petitioner Allen Clements entered his home pursuant to their warrant. Immediately after entry they showed the warrant to Clements and asked him to produce certain items listed in it, which he did. (R. 222-224, Vol. 1) Similar procedures were followed at the homes of Petitioners Alex Karras and Faraci.

Each defendant's home was "secured" following the initial entry by the raiding team. Later in the evening Captain Hackett, Chief Newey and Richard Morrison went to each home, where Morrison identified property that in most cases had already been collected by the raiding team. (See *e.g.*, R. 224, Vol. 1) In at least one home, Faraci's, the follow-up team was not able to make positive identifications of any property. Captain Hackett called the person from whom the property had been allegedly burglarized and said:

> "We are making an *investigation* on your burglary, Mr. Self. We have some property we *believe might* have been taken from your place. Would you be able to come right now and identify it?" (R. 143, Vol. 1; Emphasis added.)

After the visits by the follow-up team the defendants were asked to accompany the raiding officers to a private club in the City of Chicago. There each defendant was interrogated and asked by his superior officer to make an official Police Department "From—to" report. (See *e.g.*, R. 225, 237, Vol. 1) At about 4:30 A.M. on January 15, 1960, the defendants were taken to Police Headquarters where they were booked and informed they were under arrest. (See *e.g.*, R. 228, Vol. 1) On the same day, the raiding teams made returns on the search warrants and filed them with the clerk of the issuing court. (Search

Warrant R., page 4)[16] Orders impounding the items seized under the warrants were entered on January 18, 1960, by one of the issuing judges. (Search Warrant R., page 5)

The authority given by the Illinois Supreme Court to police officers and lower courts to disregard search warrants at their convenience and proceed on the theory of a search incident to a lawful arrest is, in no small measure, aided by the theory that the reasonableness of obtaining a warrant is never a consideration in testing the constitutionality of a search. Even if the latter hypothesis is correct, however, a doctrine that permits the police and the lower courts to "waive the warrant and proceed on the arrest," where a warrant has originally been secured and acted upon, introduces elements of such vagueness into the law of search and seizure as to astound our forebearers who first argued against the infamous "General Warrants".

In the first instance the doctrine discourages the use of warrants, or at least encourages the use of warrants which do not meet constitutional standards. As suggested earlier, if the officer can waive the warrant and proceed on the arrest, the criteria set forth in *Aguilar* v. *Texas*, 378 U.S. 108, are useless.

Secondly, the doctrine circumvents the Fourth Amendment's proscription against "general warrants" in that it allows the officer ostensibly executing the warrant to seize whatever property he chooses without being limited by the descriptions of property contained in the warrant.

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[16] "Search Warrant R." refers to a separate volume of Record filed in the Illinois Supreme Court and containing the Complaint for the Search Warrant, the Search Warrant (with return executed), and an Order.

If later challenged on the basis that he took more than or other than what was described in the warrant, as in this case, the officer need only reply that he conducted his search incident to an arrest. Actually, the officer need not even make such a reply; the prosecuting attorney can make it for him. That is precisely what occurred in the present case; not one of the raiding officers testified that he made an arrest based on probable cause and that his search was conducted incident to that arrest.

Despite the citation of *Marron* v. *United States*, 275 U.S. 192, by the Supreme Court of Illinois in support of its announced doctrine, this Court has never considered whether defects in a search warrant are immaterial if the search can be otherwise justified. In *Jones* v. *United States*, 357 U.S. 493, the Government maintained that the Court could overlook the fact that a night time search had been made pursuant to a day time warrant, and sustain the search there made as incident to a lawful arrest. The Government argued that federal agents " * * * entered petitioner's house with the purpose of arresting him, upon probable cause to believe that he was guilty of a felony and that he was then in the house. Consequently, the agents' entry was justified and, once in the house, while searching for petitioner, they could properly seize all contraband material in plain sight. * * *" 357 U.S. at page 499. This Court replied:

> "These contentions, if open to the Government here, would confront us with a grave constitutional question, namely, whether the forceful night-time entry into a dwelling to arrest a person reasonably believed within, upon probable cause that he had committed a felony, under circumstances where no reason appears why an arrest warrant could not have been sought, is consistent with the Fourth Amendment. But * * * the testimony of the federal officers makes clear beyond dis-

> pute that their purpose in entering was to search * * * and not to arrest petitioner." *Jones* v. *United States,* 357 U.S. 493, 499-500.

Your Honors' answer, while giving added support to the earlier contention that *United States* v. *Rabinowitz,* 339 U.S. 56, has been severely limited in the past few years and should be overruled, clearly imports that this Court has not espoused a doctrine that defects in a search warrant are immaterial if the search can be otherwise justified. The answer also establishes that the purpose for which the entry is made is of controlling importance. No one can or will deny that entry into the petitioners' homes was made to search pursuant to the warrants.

V.

In order to justify the searches of the Petitioners' premises other than by the search warrants, assuming that such a procedure is valid, it is necessary to establish that the "arresting officer has reasonable grounds for believing that the person to be arrested has committed" a crime. *Draper* v. *United States,* 358 U.S. 307. Accordingly the Illinois Supreme Court held that the "detailed accusations of [the informer] Morrison, together with corroborating facts concerning particular robberies, were sufficient to form a basis for a reasonable belief that a felony had been committed and that the defendants had committed it." (Appendix "A", p. 11) The Court recognized that the raiding teams had not read Morrison's statements nor talked to him, but held that the reasonableness of their actions is readily justified by the information submitted to them by their superior." (Appendix "A", p. 11) These two conclusions form the substance of this and the succeeding sub-point.

After spending approximately five months in the Cook County Jail awaiting trial for various felony charges, (Tr. 986, Vol. 2), Richard Morrison complained in a

seventy-seven page statement and a shorter statement that he had been aided by various Chicago Police Officers in the commission of burglaries. Morrison, at that time, was possessed of a monumental police record. (See, Appendix to Brief and Argument for Plaintiff in Error, Allen Clements, No. 36962 in the Supreme Court of Illinois.) He admitted to being a perjuror and to suborning others to perjury.[17] (R. 1564, 1592, 1603, 1639-1647, 1976-1987, 2010, 1610, 1652, Vols. 3 and 4.) These statements were made to the State's Attorney of Cook County who then called in several high-ranking Police Department officials to hear them. Morrison's seventy-seven page statement was read to the officers. (R. 119; 329, Vol. 1) The officers were then permitted to interview Morrison for approximately an hour and a half. (R. 119, 122, Vol. 1) During this time they asked him about various facets of his statement. At the conclusion of this meeting, the officers and the State's Attorney determined to obtain search warrants. (R. 126, Vol. 1)

The actions of Captain Hackett, who was at the meeting in the State's Attorney's office, and the manner in which the raids were carried out demonstrate the lack of faith which was placed in Morrison's accusations by the persons who heard them. Hackett himself did not believe it when Morrison's statement was first read. (R. 344, Vol. 1) Nor did he and the other high-ranking officers have any just cause to place any confidence in the uncorroborated accusations of a man with a monumental police record who had been sitting in jail for five months. Probable cause cannot be based upon such. See, *Jackson* v. *United States,* D.C. Cir. 1964, 336 F.2d 579, 580. As a re-

[17] Morrison even perjured himself in the complaints for the Search warrants. (See R. 250, Vol. 1; R. 1641, 1644, Vol. 3; R. 2010, Vol. 4.)

sult of this lack of confidence, Hackett and Chief Newey had to travel from house to house to verify Morrison's accusations by seeing for themselves if property collected by the raiding teams could be identified as stolen. (R. 338, Vol. 1) On one occasion Hackett called the owner of allegedly stolen merchandise and told him:

> "We are making an *investigation* on your burglary, Mr. Self. We have some property we *believe might* have been taken from your place. Would you be able to come out right now and identify it?" (R. 143, Vol. 1; emphasis added.)

Of property found in the home of Petitioner Faraci, Hackett said:

> "We weren't able to identify—we weren't at that time positive that they were proceeds of a burglary." (R. 145-146, Vol. 1)

Thus, strong reason exists for concluding that there was such a total lack of confidence in what Morrison had said that the searches were carried out to corroborate him. These searches were not incident to arrests, they provided the probable cause for making them. See, *Jones* v. *United States,* 357 U.S. 493. And in the final analysis, the manner in which the searches were made demonstrates the lack of probable cause which existed for making prior arrests.

VI.

Clouding the entire issue of probable cause is the fact that the officers who actually made the searches and seizures were not privy to Morrison's accusations. They did not know Morrison or anything about him. The testimony[18] of one "raiding officer" clearly shows that the

[18] See sub-point IV, *supra.*

raiding officers were ignorant of any facts. Hackett testified that he told the officers the basic essentials of Morrison's accusations and what they were to do, (R. 137-139, Vol. 1), but his statement to the officers, if it were made left much to be desired in the way of establishing Morrison's reliability and accuracy. See, *Aguilar* v. *Texas,* 378 U.S. 108. Moreover, the tone of Hackett's statement and his directions to maintain a status quo until the property was identified by the follow-up team indicate that he was not giving these officers sufficient information to enable them to make valid arrests without warrants.

As a consequence, assuming that Hackett did have probable cause to make an arrest, the question of whether this probable cause was constructively imputed to the raiding officers arises. No decision of this Court has decided the question. Because the decisions have regularly implied that probable cause is personal to the arresting officer, see *e.g., Draper* v. *United States,* 358 U.S. 307, a decision from this Court as to whether probable cause can be constructively imputed is of first importance.

CONCLUSION.

The decision of the Illinois Supreme Court presents an unprecedented extension of the permissiveness of the press under the First Amendment to the Constitution to invade defendants' rights to a fair trial under the Fourteenth Amendment to the Constitution. This is a pervading issue and one with which Bar Association Committees, courts of various states (see *People* v. *VanDuyne* 43 N.J. 369, 1964) and committees established by panels of federal judges are presently concerned.

The acceptance of this Petition and ruling thereon would serve as guide posts for both State and Federal tribunals—and possibly even to the press itself.

The Court should also take this occasion to explicitly overrule *United States* v. *Rabinowitz,* 339 U.S. 56, and eliminate an almost universal uncertainty as to whether *Rabinowitz* or *Trupiano* v. *United States,* 334 U.S. 699, is the law.

The acceptance of this petition will also clarify the right of State officials or a court to "waive the warrant" and attempt to justify a search as incident to a lawful arrest. In addition, a ruling in this area will strengthen the implicit command of the Fourth Amendment that valid warrants are essential to searches of dwelling places.

Finally, granting of the petition will clarify important questions, both for the Federal government and the States, as to necessary ingredients of probable cause and the extent to which probable cause can be "constructively imputed" from police officer to police officer.

Respectfully submitted,

CHARLES A. BELLOWS
10 South LaSalle Street
Chicago, Illinois 60603
Attorney for Petitioner, Clements.

and

JULIUS LUCIUS ECHELES
30 North LaSalle Street
Chicago, Illinois 60602
Attorney for Petitioners, Brinn, Faraci, A. Karras and S. Karras,

JASON E. BELLOWS
and
SHERMAN C. MAGIDSON
On the Brief for Petitioner, Clements.

APPENDIX "A"

Docket Nos. 36928, 36962—Agenda 1—November, 1964. The People of the State of Illinois, Defendant in Error, v. Alan Brinn *et al.*, Plaintiffs in Error.—The People of the State of Illinois, Defendant in Error, v. Allen J. Clements *et al.*, Plaintiffs in Error.

(32 Ill. 2d 232. Petition for Rehearing denied, as modified, March 17, 1965)

Mr. JUSTICE SOLFISBURG delivered the opinion of the court:

On March 25, 1960, a Cook County grand jury returned an indictment charging eight Chicago police officers, Allen Clements, Alan Brinn, Frank Faraci, Alex Karras, Sol Karras, Peter Beeftink, Henry Mulea, and Patrick Groark with conspiracy to commit burglary and conspiracy to receive stolen property. The indictment contained 18 counts, 14 of which were *nolle prossed* after a criminal court judge sustained a motion to quash the other four counts. The State appealed the order quashing the indictment in part and this court reversed and remanded for trial. *People* v. *Beeftink,* 21 Ill.2d 282.

After remand the defendants proceeded to trial on the four counts. One count charged that they conspired with Richard Morrison and Floyd Wilde on or about October 1, 1958, to commit burglary by forcibly breaking and entering into certain buildings and carrying away property contained therein. Another count alleged the same conspiracy and charged that pursuant thereto, the defendants feloniously entered the premises of Western Tire and Auto

Stores, Inc., Self Furniture Co., Firestone Stores, Inc., General Radio and Appliance Store, Danny's Squirrel Lounge, Anderson Marine Sports, and Lee Automotive Supply Co. The other two counts charged the defendants conspired to receive stolen property and alleged that pursuant thereto, the defendants received property rightfully belonging to such establishments.

A bill of particulars was furnished on the first count and specified similar offenses with respect to a Sinclair gas station at 5452 North Clark Street, Stetler's Music Store, and Walgreen's Drug Store at 7510 North Western Avenue.

Prior to trial, all charges against Richard Morrison and Floyd Wilde were *nolle prossed*. Each of the remaining eight defendants was found guilty as charged in the indictment. All were tried by a jury in a joint trial, except Patrick Groark, who had waived trial by jury. Neither Beeftink, Mulea nor Groark have sought review of their convictions. The other five defendants were sentenced to the Illinois State Penitentiary. Brinn received a sentence to 1 to 3 years; Faraci, 2 to 5 years; Clements, 2 to 5 years; Alex Karras, 2 to 5 years; Sol Karras, 2 to 3 years.

On this consolidated appeal the defendants argue that the trial court erred in failing to grant a new trial because of prejudicial publicity. They further argue that the trial court erred in failing to quash search warrants and suppress certain evidence; in failing to grant a severance; and in permitting the jury to set the penalty for the crimes.

In addition to these common claims of error, defendant Clements argues that there was a fatal variance in the indictment as to him; that the court erred in admitting

certain evidence as to him; and in denying him sufficient time to prepare post-trial motions.

We first must consider the effect of the publicity surrounding the trial. It is clear that the unfortunate scandal that gave rise to these indictments was the subject of widespread publicity in the press for more than a year prior to the trial.

Defendants were arraigned on February 15, 1961, after the return of the mandate from this court. The cause was set for trial by agreement on May 15 and again reset for June 12, 1961. At that time the defendants moved for a further continuance, and some of the defendants also asked that the cause be transferred to another county because of the prejudice of Cook County residents, although no motion was filed for such change of venue in accordance with the statute. (Ill. Rev. Stat. 1961, chap. 146, pars. 20, 22-24.) Defendant Faraci sought to have the trial judge use his contempt power to control the reporting of the trial.

The trial court denied all the requests of defendants and proceeded with the selection of the jury. For seven days a thorough examination was conducted of prospective jurors with regard to any views they might have due to the reading of newspaper articles. Approximately 180 prospective jurors were examined on the question of the influence of publicity. Eighty were excused for cause by the trial court upon group inquiries. Twenty-six were excused for reason of the influence of publicity, and the remainder for other causes. One hundred prospective jurors were individually examined by counsel and twenty stated that they at one time formed some opinion as to the guilt or innocence of the defendants, and were excused.

When the last of the twelve jurors was accepted the defendants had twenty preemptory challenges remaining. On the basis of the entire record on *voir dire* examination, we do not believe that the defendants have shown such a pervasive prejudice created by pretrial publicity that would prevent the selection of an impartial jury. The fact that defendants did not challenge any of the jurors selected is strong evidence that they were convinced that the jurors were impartial and unbiased. *Beck* v. *Washington*, 369 U.S. 541, 8 L. ed 8d 98.

It therefore follows that the trial judge did not abuse his discretion in denying defendants' pretrial motions in relation to prejudicial publicity.

Defendants also contend that the publicity during the actual trial was prejudicial and deprived them of a fair trial. In support of this argument defendants have pointed out almost daily banner headlines from Chicago newspapers relating to the trial. In addition to the effect of the totality of attendant publicity, defendants point out three specific instances of prejudicial material.

The first instance was a headline appearing after the trial judge had denied defendants' motion for a directed verdict at the close of the State's case. The front page headline stated: "Cop Judge Decides: 'I Can Believe Thief,' Police Lose Acquittal Bid."

The second example was an apparently false front page headline appearing during the trial stating: "Two Cops Offer Guilty Plea"

Further headlines appeared prior to final arguments quoting Morrison to the effect that "Cops Tried To Kill Me."

The issue of newspaper publicity was raised by almost daily motions for a mistrial, requests that the trial judge exercise supervisory powers over the press, and requests for individual examination of each juror outside the presence of the others. All such requests were denied.

This argument raises the serious problem of the possible conflict between the fundamental right of a free press and a public trial and the equally basic right that the accused should be tried by a fair and impartial jury.

One solution to the problem of eliminating improper influences on jurors during a trial is the complete seclusion of the jury, and we think that the defendants, on the particular facts of this case, had the right to insist on such seclusion. *People* v. *Wilson,* 400 Ill. 603, 610-611; *People* v. *Schneider,* 362 Ill. 478.

At the beginning of the trial counsel for defendant Faraci moved that the jury be locked up, and the State joined in the request. The court took the motion under advisement and asked that it be renewed each day. Thereafter the combined defense counsel elected to have the jury separate and later in the trial defendant Faraci declined to renew his motion for seclusion of the jury even though the trial court advised that such a motion would be granted.

The trial court also admonished the jury at length at the beginning and end of each day of trial as to their duty as jurors to remain free from outside influences and to refrain from reading or viewing matters relating to the trial. In addition the trial judge interrogated the jury each day as to their exposure to external influences, and the jurors repeatedly denied such exposure.

At no time during the trial did the defendants offer any evidence that a juror had seen any of the objectionable headlines.

Prior to final arguments, one of defense counsel requested that defendants' attorneys be permitted to conduct an individual *voir dire* examination of each juror concerning their exposure to news media, and suggested many proposed lines of inquiry. In view of the precautions and interrogations by the trial judge heretofore noted, we do not believe the trial court abused its discretion in refusing to permit the procedure suggested.

We have examined the facts of the cases cited by defendants where mistrials were granted because of prejudicial publicity during trial, and find that there was either clear proof that some of the jurors had read the offending articles (*Marshall* v. *United States,* 360 U.S. 310, 3 L. ed. 2d 1250; *People* v. *Kenzik,* 9 Ill.2d 204; *People* v. *Hryciuk,* 5 Ill.2d 176), or there was exposure to a prejudicial report and a complete failure to instruct or admonish the jury not to consider anything they may have read about the case. *People* v. *Murawski,* 394 Ill. 236.

In *People* v. *Gambino,* 12 Ill.2d 29, this court affirmed the denial of a motion for a mistrial on the ground of prejudicial publicity, stating at pages 36-37:

"The record before us is devoid of any facts or circumstances from which it is reasonable to infer that any of the jurors read the newspaper accounts in question, except for the bare assertion of defense counsel in the motion for mistrial. Such statement is insufficient to raise the inference that the jurors have seen or read the questioned article or articles. (*People* v. *Harrison,* 384 Ill. 201; *People* v. *Herbert,* 340 Ill. 320.) While the motion alleged that the jurors had access to and read the articles, yet such assertion is not made in the supporting affidavit. Upon this record neither the trial court, nor this court, would be jus-

tified in concluding that a juror or jurors read any of the articles. Without such showing there is no reasonable basis for the inference that they were influenced or prejudiced thereby."

In the present case, where there is no evidence in the record that the jurors had read the headlines and indeed a negative response by the jurors to specific inquiries as to their exposure to such influences, we do not believe that the trial judge erred in believing that the panel was free of prejudice and that the jurors had heeded the court's constant instructions and admonishments. (*Cohen* v. *United States* (9th Cir.) 297 F.2d 760, 764.) We therefore conclude that the trial court did not err in denying defendants' motions for mistrial.

Defendants also urge that their post-trial motions to vacate the judgments should have been granted. These motions set forth an article appearing in a local paper the day after verdict, in which a reporter, one Baldwin, quoted an unnamed juror as stating she had commented that Brinn had warned Morrison that some of the others had set up a trap to get him killed. Defendants also moved that the jurors be subpoenaed in order that they might be interrogated concerning the truth of the article.

Although eleven days elapsed between the article and the hearing, the defendants failed to offer any proof, either by witnesses or affidavits, to support the pure hearsay contained in the article.

In view of defendants' failure to make any showing of an attempt to subpoena witnesses, or even to interview them, we can find no error in the trial court denying a motion that it subpoena witnesses and conduct a hearing. In *People* v. *Stacey*, 25 Ill.2d 258, 270, the defendant sought

a new trial on the ground that a newspaper article quoted jurors as stating that they were influenced in their verdict by certain improper publicity. We stated at page 270: "This newspaper article was pure hearsay and was entirely insufficient evidence upon which to contend that the jurors were improperly influenced. It has always been held that the verdict of jurors cannot be impeached even by their own affidavit or testimony. (*People* v. *Pulaski*, 15 Ill.2d 291, 300.) Here, we do not even have the statements of the jurors themselves, but merely the statement of a newspaper reporter as to what the jurors had told him. This showing was entirely insufficient to establish that the verdict of the jurors was rendered as a result of any improper newspaper publicity."

We adhere to the views expressed in the *Stacey* case and hold the trial court properly denied the motion for a new trial.

We must next consider the contention that the trial court erred in failing to quash search warrants and suppress the evidence of stolen goods found in the residences of the defendants.

All the searches involved were made on January 14, 1960, pursuant to written statements of Richard Morrison and interviews between Morrison and police officials on January 13 and 14, in which he detailed the commission of robberies with the defendants and stated that stolen property could be found in the homes of the defendants. Search warrants were then prepared, and teams of police officers were ordered to the Conrad Hilton Hotel for a meeting. Captain Hackett testified that he told the officers that a man in custody had accused certain police of aiding him in burglaries and in receiving the proceeds. He also told them

that they had ten search warrants for the men and that they were to go to the residences of the men at 10:30 and keep the premises as they found them until Chief Newey and Morrison arrived.

Pursuant to these orders the police entered the residences of the defendants and waited until Newey, Morrison and others arrived. The defendants were all taken to a local club and thereafter interrogated.

Because of obvious defects in the search warrants, the trial court held that the search and seizure of the property in question was justified, not on the basis of the search warrants, but on the basis that the searches and seizures were incident to lawful arrests. On this appeal the State relies on the same reasoning.

It is well settled that defects in a search warrant are immaterial if the search can be otherwise justified. (*Marron* v. *United States,* 275 U.S. 192, 198, 72 L. ed. 231; *United States* v. *Gearhart* (4th cir.) 326 F.2d 412; *United States* v. *Jones* (7th cir.) 204 F.2d 745; cert. den. 346 U.S. 854; *People* v. *McIntyre,* 15 Ill.2d 350.) It is further clear that a reasonable search incident to a lawful arrest is proper. *Harris* v. *United States,* 331 U.S. 145, 150, 91 L. ed. 1399; *People* v. *Fiorito,* 19 Ill.2d 246, 252; *People* v. *La Bostrie,* 14 Ill.2d 617, 621.

As we stated in *People* v. *Fiorito,* 19 Ill.2d 246, 253; "An arrest without a warrant is lawful if a criminal offense has in fact been committed and the arresting officer has reasonable grounds for believing that the person to be arrested has committed it. (Ill. Rev. Stat. 1957, chap. 38, par. 657; *People* v. *LaBostrie,* 14 Ill.2d 617, 621; *People* v. *Boozer,* 12 Ill.2d 184, 187; *Draper* v. *United States,* 358 U.S. 307, 3 L. Ed.2d 327.) Probable cause or

reasonable grounds in such a situation means something less than the evidence which would result in conviction. *People* v. *Jones*, 16 Ill.2d 569, 573.

"There is a great difference between that which is required to prove guilt in a criminal case and probable cause for arrest and search, as well as in the tribunals which determine such matters, and therefore, a like difference in the *quanta* and *modes* of proof required to establish such guilt or probable cause. (*Draper* v. *United States*, 358 U.S. 307, 3 L. ed. 2d 327; *Brinegar* v. *United States*, 338 U.S. 160, 93 L. ed. 1879.) Probable cause for arrest exists where the facts and circumstances within the arresting officer's knowledge and of which he had reasonable and trustworthy information are sufficient in themselves to warrant a man of reasonable caution in believing that an offense has been committed and that the person arrested is guilty. *People* v. *Jones*, 16 Ill.2d 569, 574; *People* v. *La Bostrie*, 14 Ill.2d 617, 622."

In the *Fiorito* case we further pointed out at page 255:

"A completely satisfactory determination of what constitutes reasonable cause for arrest by an officer without a warrant is difficult to formulate. The recurring question must be resolved by the facts and circumstances of each case. In deciding the question in a particular case the courts deal with probabilities and are not disposed to be unduly technical. They must act upon 'the factual and practical considerations of everyday life upon which reasonable and prudent men, not legal technicians, act.' (*United States* v. *Rabinowitz*, 339 U.S. 56, 63, 94 L. ed 653, 659; *Brinegar* v. *United States*, 338 U.S. 160, 175, 93 L. ed. 2d 1879, 1890; *People* v. *La Bostrie*, 14 Ill.2d 617, 621, 622; *People* v. *Tillman*, 1 Ill. 2d 525, 530.)"

From a careful review of the record in this case we think the detailed accusations of Morrison, together with corroborating facts concerning particular robberies, were sufficient to form a basis for a reasonable belief that a felony had been committed and that the defendants had committed it.

It is true that the teams of police officers making the search had not read Morrison's statements and had not talked to him, but the reasonableness of their actions is readily justified by the information submitted to them by their superior.

Defendants further contend that they were not arrested prior to the searches. We have examined the record and find that, despite some lack of verbal precision, there can be no doubt that the defendants were each arrested prior to the questioned searches and seizures. All were detained by the police and thereafter taken to a central place for interrogation and later "booked."

We find that the trial court was correct in refusing to suppress the evidence since it was obtained by reasonable searches incident to lawful arrests.

We next turn to the argument strongly urged by defendant Clements and joined in by other defendants that the evidence at most proved separate burglaries or separate and distinct conspiracies rather than a single conspiracy involving all of the defendants.

Defendant Clements accepts the traditional rule that the truth of Morrison's accusations against defendants is for the trier of fact (*People* v. *Woods,* 26 Ill.2d 582), but insists that such accusations do not amount to proof of a single conspiracy.

The evidence shows that Morrison first met Faraci and Brinn in June, 1958, and that in September, Faraci, Brinn and the Karrases had discussions about burglarizing the Western Tire and Auto store. This burglary was accomplished and there is ample evidence that Faraci, Brinn, the Karrases, Mulea and Groark were involved in the incident and shared in the proceeds.

In October, Alex Karras, Faraci and Beeftink discussed and were involved in two burglaries, while Faraci was involved in another of which it is clear that Alex Karras and Beeftink had knowledge.

These operations continued and in November Morrison burglarized the Firestone store after discussions with Faraci, Brinn and Alex Karras. Morrison was arrested as a result of this burglary by other officers of the Summerdale District, and while in jail advised Alex Karras and Faraci to go to his apartment and take the stolen property before his apartment was searched.

Clements first became involved with Morrison in February, 1959, when either Groark or Alex Karras told Clements that Morrison was all right, and had committed burglaries with them. Later that month, Clements informed Morrison that he would commit burglaries with him on days off, but not with other officers in the district, and on March 29, 1959, Clements, Morrison and one Wilde broke into the Squirrel Lounge and the General Radio and Appliance store. On April 10, 1959, Lee Automotive Supply was burglarized while Clements was on duty on a three-wheeler in the area. On April 28, 1959, the Firestone store in the Summerdale district at the corner of Clements' post was broken into a second time, while Brinn, Mulea and

Clements were on duty. Morrison was not involved in this burglary, but two television sets and a radio stolen from the store were found in Clements' home on January 14, 1960.

Among the property taken from another burglary was a portable television set, without a back, which Brinn brought to Donato's Repair Service for repairs and a new back in June, 1959. Brinn said the set belonged to Clements, and a receipt for payment was subsequently made out to Clements on October 16, 1959. This television set was also recovered from Clements's home on January 14, 1960.

Conspiracy has been defined as a confederacy of two or more persons to accomplish an unlawful purpose (*People* v. *Bain*, 359 Ill. 455,) and whether a scheme is one conspiracy or several separate ventures is ordinarily a question of fact. *Hayes* v. *United States* (8th cir.) 329 F. 2d 209, 214; *United States* v. *Crosby* (2d cir.) 294 F. 2d 928, 945.

We agree with defendant Clements that a coincidental similarity of operation, such as strangers disposing of stolen goods to a single receiver, (*United States* v. *Lekacos* (2d cir.) 151 F. 2d 170,) or strangers obtaining different favors by bribes to a single official, (*Canella* v. *United States* (9th cir.) 157 F. 2d 470,) does not necessarily involve all in a single conspiracy. *People* v. *Gates*, 29 Ill. 2d 586; *Rocha* v. *United States* (9th cir.) 288 F. 2d 545.

Nevertheless it is well settled that the existence of a single conspiracy may be proved not only by direct evidence but also by inference from conduct, statements, facts and circumstances which disclose a common design on the part of the accused and others to act in pursuance of a common criminal purpose. *People* v. *Borrelli*, 392 Ill. 481; *People* v. *Link*, 365 Ill. 266; *Ochs* v. *People*, 124 Ill. 399.

From an examination of this voluminous record we find the conclusion not only permissible but inescapable that all of the defendants entered into a single design, albeit at different times, to use their peculiar position as police officers in the Summerdale district to conduct a wholesale looting of stores in the district. While not all of the defendants took part in every burglary, there is sufficient evidence that they were all well aware of a concerted purpose to protect Morrison and others in his activities and to share in the proceeds. Whether their individual activity was in serving as lookout, picking up the goods, refraining from investigating, or aiding in avoiding detection, we feel that the jury, admittedly properly instructed, could have found defendants guilty of a single conspiracy. *People* v. *Link,* 365 Ill. 266, 286.

We have also examined the contentions of Brinn and the Karras brothers that they were prejudiced by the court's denial of motions for severance. We stated in *People* v. *Grilec,* 2 Ill. 2d 538, 546-547: "The general rule is that where one or more defendants are jointly indicted for the commission of a crime, they are to be tried together; and whether a separate trial should be granted is largely within the sound judicial discretion of the trial court. (*People* v. *Barbaro,* 395 Ill. 264; *People* v. *Mutter,* 378 Ill. 216.) The record here discloses not only that the defenses of Grilec and his codefendant Milosic were not antagonistic, but, on the contrary, they were wholly consistent and harmonious. The paramount inquiry or test is, are the defenses of such an antagonistic nature that a severance is imperative to insure a fair trial. We are of the opinion the trial court did not err in denying plaintiff in error's motion for a severance."

The record indicates that the defenses in this case were not basically antagonistic. The only alleged antagonism involves a conflict in part of the various exculpatory statements of the Karras brothers and Brinn. All of the defendants made exculpatory statements after their arrests. In Brinn's statement he indicated that he was in the home of Sol Karras when Morrison was there with merchandise. This statement was introduced into evidence with the names of Morrison and Karras deleted and the jury was properly instructed that it was to be considered only against Brinn. The Karras statements as originally read to the jury made no mention of Brinn, but in rebuttal the deleted statements referring to Brinn were introduced to show contradictions between the trial testimony of the Karras brothers and their pretrial statements.

It appears that the jury was thoroughly and properly instructed as to the limited purpose for which the statements were introduced. We have examined the voluminous report of proceedings and determine that no such antagonism or prejudice was created to require separate trials for the defendants. The trial judge therefore did not abuse his discretion in denying the motions for severance.

Defendant Clements also claims error in the admission into evidence of a radio and two television sets which were found in his home. Clements insisted he had purchased them from Morrison. Evidence adduced by the State was sufficient to show that the items came from a burglary of the Firestone store on April 27 or 28, 1959. This burglary was not encompassed by the indictments or by the bill of particulars. Nevertheless we think that evidence of the possession of this stolen merchandise is admissible to show guilty knowledge on the part of Clements. *People* v. *Fiorito*, 413 Ill. 123, 131; *People* v. *Wagman*, 311 Ill. 330, 336.

Clements also claims he was denied due process of law in that he was not given time to prepare and argue post-trial motions. We find the post-trial motions were argued orally the day after trial upon stipulation of the parties entered into after the State waived the requirement of written post-trial motions and agreed that defendants should not be prejudiced from raising any issue on appeal except the matter of the time for hearing on the motions. Defendants were not denied either the right to argue motions or to obtain additional time, and in fact were offered two weeks to file written motions. We find they have in no way been prejudiced by the procedure followed.

Finally all defendants earnestly contend that the statute under which they were sentenced (Ill. Rev. Stat. 1961, chap. 38, par. 754a,) was unconstitutional in that it permitted the jury to set the degree of punishment. They first relied chiefly on an unreported opinion of the United States District Court for the Northern District of Illinois (*United States ex rel. Witherspoon* v. *Ogilvie,* 63 C. 1812), wherein the trial court held the precise statute unconstitutional. Subsequent to the filing of defendants' brief, the Court of Appeals for the Seventh Circuit reversed in *United States ex rel. Witherspoon* v. *Ogilvie,* 337 F. 2d 427, 431,) stating: "From our study of the matter we perceive no violation of due process or deprivation of equal protection of law, whether in the classification of offenses Illinois made with respect to whether the court or the jury would fix the punishment following conviction in a jury trial or in the procedure followed in the trial of the petitioner as a result of that classification." A petition for writ of *certiorari* has been docketed in the Supreme Court of the United States on October 17, 1964. *Witherspoon* v. *Ogilvie,* No. 602 Misc.

The argument of defendants was also fully considered by the court in *People* v. *Kolep*, 29 Ill. 2d 116, 126, where we stated: "It is urged by defendant that this statute was violative of section 5 of article II of the Illinois constitution. This constitutional provision guarantees to every person charged with crime the right to trial by jury as 'heretofore enjoyed'. Under the common law in force at the time of the adoption of the Illinois constitution the judge and not the jury fixed the sentence in criminal cases. The particular issue however is whether permitting the jury to fix the penalty in such cases is a deprivation of a defendant's guaranteed constitutional right of trial by jury. As early as 1725 the jury fixed punishment under the common law. Many of the States of this country have shifted the power of imposing sentences in criminal cases from the judge to the jury and then back to the judge. Under the present Illinois Criminal Code this power is now with the trial judge and not the jury. For a proper interpretation of the jury-trial guarantee we have examined many State and Federal cases. In essence this guarantee insures to a defendant in a criminal case (1) the right to have the facts in controversy determined by 12 impartial jurors (2) that the trial be conducted in the presence and under the direction and superintendence of a judge and (3) that the verdict be unanimous. (See, *Sinopoli* v. *Chicago Railways Co.*, 316 Ill. 609; *Commonwealth* v. *Loftus*, 292 Pa. 395, 141 Atl. 289; *Lindsey* v. *United States*, (D.C. cir.) 133 F. 2d 368; *Patton* v. *United States*, 281 U.S. 276, 74 L. ed. 854.) We are of the opinion that the constitutional guarantee of trial by jury in criminal cases does not preclude the jury's power to fix the punishment."

No persuasive arguments have been advanced to change our opinion and we adhere to our decision in the *Kolep* case.

In conclusion we find from this record that the defendants have received a fair trial by an impartial jury; that the evidence supports their verdicts, and no prejudicial error intervened to require a new trial. The judgments of the trial court are therefore affirmed.

Judgments affirmed.

APPENDIX B

(Some of the Headlines included in Newspaper Exhibits, Volume 13)

Cops Forced Me To Steal: Morrison

(Front page, Chicago's American, June 14, 1961, Ex. I)

Defense Attorneys Wrangle, Delay Cops-Robbers Trial

(Chicago Sun-Times, June 17, 1961, p. 32, Ex. J)

Thief Set To Accuse Policemen In Court

(Front page, double headline, Chicago Daily News, June 14, 1961 Ex. J)

Babbling Burglar May Get Last Laugh As He Recalls Doubts About His Story

(Chicago Sun-Times, June 19, 1961, p. 34, Ex. K)

Cops-Robbers Trial Writing A Chapter In City's History

(Pictures of the trial judge and of Richard Morrison appear next to each other, Sun-Times, June 25, 1961, p. 36, Ex. 0)

Call Ex-Cops 'Malicious' Thieves

(Sun-Times, June 27, 1961, p. 3, Ex. Q)

Babbling Burglar Writes 'Crime With Cops' Details

(Double front page headline, Sun-Times, June 29, 1961, Ex. R)

How Cops Split Loot Told

(Front page headline, Chicago Daily Tribune, July 6, 1961, Ex. V)

Judge Rejects Defense Plea In Trial Of 8 Former Cops

(Sun-Times, July 7, 1961, p. 17, Ex. W)

Ties Looting Web Around 8 Ex-Cops

(Front page, Tribune, July 7, 1961, Ex. X)

Burglar Tells Court:
Nixon Wound Up In Car I Got With Bogus Money

(Triple front page headline, Daily News, July 11, 1961, Ex. Z)

2 Cops Offer Guilty Plea

(Pictures and identification of Frank Faraci and Allan Brinn appear side by side under the headline. Front page headline, Sun-Times, July 13, 1961, Ex. BB)

2 Cops On Trial Seek Deal: Offer Guilty Plea In Trade For Leniency

(Pictures and identification of Brinn and Faraci appear on front page. Front page headline, Tribune, July 13, 1961, Ex. CC)

Cop Trial Judge: No Deals! Defense Loses Mistrial Plea On Bias Claim

(Front page headline, Chicago's American, July 13, 1961, Ex. EE)

Judge Rules 'No Deals' In Cops Trial Denies Pleas For Mistrial

(Front page, Tribune, July 14, 1961, Ex. GG)

Cop Witness Slugged In Bar Brawl

(American, July 17, 1961, p. 3, Ex. II)

Defense Hints Some Cops Admit Guilt

(Front page, Tribune, July 25, 1961, Ex. RR)

Warns Of 'Free For All' At Cop Scandal Trial
Defense Attorney Requests Seperate Hearing For Client

(Daily News, July 24, 1961, page 9, Ex. SS)

New Mistrial Plea Denied In Ex-Cops Trial

(American, July 24, 1961, p. 3, Ex TT)

Lawyer Concedes Admission By Ex-Cops

(Sun-Times, July 25, 1961, p. 24, Ex. UU)

Cops 'Curse' Defense Bickering Roil Trial

(Front page, Tribune, July 26, 1961, Ex. XX)

CHICAGO'S AMERICAN EXCLUSIVE

Signed Reports Link Ex-Cops To Morrison

(Front page, American, July 27, 1961, Ex. YY)

Rejects New Cop Mistrial Plea
Judge Says He Doesn't Think Publicity Is Influencing Jury

(Daily News, July 27, 1961, p. 6, Ex. AAA)

Bare Added Charge Against Cops

(Sun-Times, July 28, 1961, p. 5, Ex. BBB)

Reveal Morrison's $300,000 Cop Plot

(Front page, Sun-Times, July 30, 1961, Ex. DDD)

Morrison Airs New Pay Offs

(Sun-Times, July 31, 1961, p. 4, Ex. EEE)

Burglar Morrison Pal Slain

(Front page, American, August 2, 1961, Ex. LLL)

State Rests In Ex-Cops Trial; One Link 6 Others To Thief

(Sun-Times, August 4, 1961, p. 42, Ex. NNN)

Cop Judge Decides: 'I Can Believe Thief' Police Lose Acquittal Bid

(Front page, Daily News, August 4, 1961, Ex. PPP)

Report 7 Ex-Cops Won't Take Stand

(Sun-Times, August 8, 1961, p. 3, Ex. RRR)

Chicago's War Against Crooked Cops

(Advertisement of Sat. Eve Post, Tribune, August 8, 1961, p. 14, Ex. TTT)

Lawyers For Cops Swap Angry Words Dispute On Defense Tactics Breaks Out Into Open

(Front page, Daily News, August 11, 1961, Ex. SSS)

Cops Attorneys Quarrel In Cross-Exam Switch

(American, August 14, 1961, p. 3, Ex. CCCC)

State Hope To Persuade Jury One Or More Of Ex-Cops Lied

(Sun-Times, August 18, 1961, p. 21, Ex. EEEE)

'Babbling Burglar Talks Again'

Cops Planned His Death, He Says

(Sun-Times, August 20, 1961, p. 3, Ex. FFFF)

Cops Wanted To Kill Me, Morrison Says

(Tribune, August 20, 1961, p. 3, Ex. GGGG)

'Cops Tried To Kill Me' Morrison's Reason For Accusing 8

(Front page, Sunday Tribune, August 20, 1961, Ex. KKKK)

APPENDIX C

EXHIBIT BB

CHICAGO DAILY NEWS

FINAL MARKETS RED STREAK

34 PAGES — FRIDAY, AUG. 4, 1961 — 7 CENTS

Let's Settle on Germany: Russia

Talk or Else, West Warned

Soviets to Sign Separate Pact If Allies Refuse to Negotiate

MOSCOW—The Soviet Union, in relatively mild [illegible] to the Western powers made public Friday, said it is ready to negotiate with them on a German [illegible] treaty.

[illegible]

COP JUDGE DECIDES: 'I CAN BELIEVE THIEF'

Move To End Piracy

U.S. Seeks Stiff Penalties

WASHINGTON—The Kennedy administration urged prompt passage Thursday of legislation to make under hijacking punishable by life imprisonment and provide stiff penalties for other [illegible]

[illegible]

Good-by, Mr. Chips

[illegible]

Police Lose Acquittal Bid

Parsons Says Morrison's Story Can Be Evaluated by Jury

[illegible]

Stocks Hit New Peak

[illegible]

Ask Peoples Gas Co. Stock Split

[illegible]

Battle On for Chrysler Corp.

[illegible]

Longden Fined After Fight

[illegible]

Hunt Man Who 'Carved' Girl, 14

[illegible]

Hundreds Flee Chemical Fog

[illegible]

Late Races

[illegible]

3 Iowa Infants Die; Baby Sitter Held

Police Report Woman Tells How the Children Suffocated

[illegible]

28 Die, 39 Hurt In Arak Battles

[illegible]

Jet Lands Safely

[illegible]

Fulbright Pleads for Aid Bill

Warns of Perils If It's Defeated

[illegible]

You'll Find:

[illegible]

THE WEATHER...

Fine Sunday After Mess On Saturday

[illegible]

Today's Chuckle

[illegible]

LUKE BALTON

Our Hero Saves Man In Lake

See Back Page

2 Here Cleared For U.S. Bench

Judges Austin and Parsons OKd by Justice Department

[illegible]

EXHIBIT CC

THE WEATHER
Cloudy Thursday with occasional thunder showers. High in 80s. See Page 39.

CHICAGO
SUN-TIMES

FINAL
HOME EDITION

Vol. 14, No. 139 WHitehall 3-3000 THURSDAY, JULY 13, 1961 108 Pages, 2 Sections—7 Cents

2 Cops Offer Guilty Plea

3 Ex-Felons In State Hospital Jobs

5-Cent CTA Transfers Set

Willis Gets $48,500, 4-Yr. Pact

Story And Picture On Page 2

VEECK'S NEW HOME

Story, Exclusive Photos On Pages 3 And 42

U.S. Probes Harness Tracks Here

Exclusive Story On Page 3

EXHIBIT EE

U.S. Bases Easy Red Targets—De Seversky

From the Book, 'America—Too Young to Die'—Page 20

CLOUDY

Chicago's AMERICAN

Always On Top Of The News

FINAL MARKETS

Final DIAMOND

THURSDAY JULY 3 1961 — 7 CENTS

Cop Trial Judge: No Deals!

Act to Speed Start on Loop Civic Center

Kennedy Flees 1,800 Eager Fans

G.O.P. Aids Ask U. S. to Police Illinois Vote

Baffler Puzzle

See Page 28

Mabley's Report

See Page 3

10 Buildings Burned at Harvester

Defense Loses Mistrial Plea on Bias Claim

Boy Beaten Near Harrison High

Kennedy's Gift to Ayub: Shotgun Inlaid with Gold

Lowry Hasn't Quit: Kerner

Dr. Sablon Guilty of Spy Charge

Reds Too Hungry to Fight: Senator

'In God We Trust'—Delay to Save Jobs

Wheel Disabled, Plane Lands Safe

Late Race Results

Sen. Byrd 'Almost' President

Electoral 'Plot' Bared

See Today's Want Ad Offers!

Home from the Editor

A Quick 3 Question Quiz:

Phone Home Delivery, AHdover 3-1234

TODAY'S INDEX

Financial News on Page 37

17

EXHIBIT FFFF

CHICAGO SUN-TIMES, Sun., Aug. 30, 1964 3

Hoover: 'An Old Man In A Hurry'

For the first time in nearly two score years, the United States has duly living Presidents. Three men of widely divergent views and methods—each the product and soldier of different eras—all have had to make the decisions affecting the operation of tremendous power and responsibility in the role of private citizens.

Each is reading the transition in his own way. And in the process, in the hesitant absence of executive decision, each has necessarily had to act more. In this series, Associated Press writer Saul Pett takes a fresh, penetrating look at the late whose spirited bond is the Presidency. The first article is devoted to Herbert Clark Hoover. On succeeding Sundays, Pett will write about Harry S. Truman and Dwight David Eisenhower.

By Saul Pett

NEW YORK (AP)—In 1957, when he was 83 years old, Herbert Clark Hoover went to Independence, Mo., to help dedicate the Harry Truman Library on a hot July day.

For an interim, he sat in 91-degree heat and a flow of oratory. It is difficult to know which he relished more, although his views are ordinarily not sleepy and slow.

After the ceremonies, the 31st President of the United States was invited to the home of his friend, the 33d President of the United States, for refreshments. A friend remembers Hoover with surrounds, flushed and up to life. Hoover and related what ex-Presidents do with all their time.

"Nothing," said Mr. Hoover, "we spend our time talking with and discussing libraries."

Like all Hoover humor, which is unpredictable, the joke was delivered deadpan from a square, angular-set face. The words were blown off, as if broken from a fresh stalk of celery. The eyes at the edges of his smooth, pink face were blue and cold. Under the circumstances, a faint twinkle behind bifocal lenses was the only clue—the look of a man who could no longer be surprised, shocked or hurt by the foibles of men.

A Long-Lived Busy 'Ex'

None of the nation's three ex-Presidents spends much time on golf, or at least not for long periods. All remember busy men. Of the three, the oldest appears the busiest.

At 90, the longest-lived President since John Adams, Mr. Hoover still puts in more than 10 hours of work a day at his desk in his Waldorf Towers apartment, writing books, talking and receiving speakers and guests, helping to raise money for various charitable and educational institutions.

Such activity would be remarkable for any man of 67. It is even more remarkable for this man who has suffered illnesses that would have finished 20 years ago when lesser diseases ran a close no less sure and swapped the bulk.

Herbert Hoover left the White House in 1933 during the long dark agony of the depression, on which a majority of Americans hold he was the chief villain. He left at a time of deep bitterness.

Butt Of Depression-Spawned Jokes

Shantytowns were called Hoovervilles, cars drawn by mules, Hoover wagons; pork rabbits, Hoover hogs; newspapers wrapped around the body of a man sleeping on a park bench, Hoover blankets.

He left on the butt of a thousand bitter jokes. According

Turn to Page 10

'BABBLING BURGLAR' TALKS AGAIN

Cops Planned His Death, He Says

By Ray Brennan

A little blue-eyed man in a white sports shirt talked on tape on Saturday in a big city courthouse, and, presumably, both in Cook County jail.

The speaker, Richard Morrison, 25, charged that four of eight policemen on trial in Criminal Court had tried to set him up for killing.

That was the reason he opened talking fire against the defendants, he said.

One of them, Allen Brown, 31, probably saved his life by warning him away from a burglary that could have meant death, he said on.

Felt A Compulsion

Morrison had an engagement on air of plaintiffs pleading for acquittal and not guilty. Then he answered attorneys' questions from his cell.

In telling of his arrest for burglary in July, 1959, Morrison said he felt compelled to open mind pigeon.

"I had to do something or you wouldn't be sold," he said. "I just opened up and talked every thing."

"They (the policemen) in accord of his burglary partners] they were going to kill me. They tried to set me up for killing, or some of them did."

As a witness held in a separate section of the County Jail, Morrison has much greater latitude and many more privileges than others in regular prisoner compound of a prison.

He protested around the big cell block where he has been confined for 23 months.

"You haven't been any place, I can tell you," he said.

Plan Of Fresh Fruit

There was a colored shower and a touch of romance for the men assigned "Daily for the Lonely."

A glass of fresh fruit and a jar of preserved chicken were on a white cloth over a bunk.

There a large canvas bag a half dozen freshly laundered white shirts, a few pairs of white undershirts for undershirt shorts, was on the floor.

A magazine on a rack contained an article entitled "Chicago's Top Cop"—Supt. Orlando W. Wilson. Rain pattered outside three big windows, one of them open to the breeze.

In the corridors, women in parking hat, their lawyers and with Judge James B. Parsons in the chambers, discussing points of law.

They are among the principals in the trial of the eight policemen on charges, Morrison framed with murder.

The conspiracy trial, of which the latter man testified for 10 days, will resume on Monday and is in and is not on there then.

Morrison remembered back the night he was shot. The cold police of the South Commons glittered. He had kept repeating and after beginning to sing for half an hour while he pretended to sleep.

Of the eight policemen on trial, he said:

"I have nothing against them. If they go to the penitentiary they will have got themselves there by their own testimony."

Of the six women jury hearing the trial:

"Women are funny. They are emotional. All women are. I don't know what with details."

Of his future:

"I won't stay around Chicago. I'd get killed, I think. I'm going to change my name and get a job and exercise and put on weight. When I've finished, you

Richard Morrison relaxes among paraphernalia as he talks to newsmen at County Jail. (Sun-Times Photo)

won't recognize me.

"I'd like to message a good one before I can handle

Turn to Page 40

Two Slain, Three Shot After Quarrel Over Car

SAVED FROM WELL
Johnny Wheeler, 5, is hauled to safety by Firefighter [illegible] after falling [illegible] feet down a dry well in the backyard of his home at Cheyenne, Kan. A rope was lowered by the boy and he was told to hang on. He was dug out safely, but rescuers took over an hour. [AP]

Two men were shot to death and another permanently crippled in a gun battle on the street Saturday night in front of 2400 S. Lawn. A fourth person was injured when the car struck by gunfire hurtled.

Police said the shooting was ushered off by a drunken quarrel over who was going to drive a car.

Were the Police

Chester Pleasant, 31, of 2420 S. Lawn, was killed by police after he fired on them in the belief he was going to the [illegible].

The other man killed was Otis Wright, 42, of 2400 S. Lawn.

Wilson Martin, 37, of 4172 S. Wallace, was shot in the abdomen, apparently by Pleasant, police said.

Another man shot in the abdomen was Lonnie Rogers, of 1720 Vine.

Pleasant's wife, Ethel, was struck in the right hand with a shot however.

Argument Is Silent

Witnesses told police an argument broke out at the scene about 11:15 p.m. and that all of those involved had been drinking. Police said all were questioned and were prepared to drive somewhere in a car.

The argument appeared to have ended when one was going to drive the car.

Martin allegedly picked up a hammer and Pleasant told him to drop it. Pleasant then shot Martin in the abdomen, police said.

When police raced to the scene, Pleasant was lying on the sidewalk and was killed by police bullets.

Pleasant was dead on arrival at Liberty Memorial Hospital.

Mrs. Pleasant was shot when Pleasant, police said, drew what are now presumed dead.

Mrs. Martin and Rogers also were treated at Liberty Hospital.

Pick Ringwood Girl Dairy Princess

Pamela Hogan, 17, of Ringwood, Ill., was chosen Illinois Dairy Princess of 1965 Saturday night.

She is sponsored by the Illinois Associated Dairy Farm, at Woodstock.

She will act as a good-will ambassador for the dairy industry and will be entered in the National Dairy Princess Contest next November.

She was one eight other girls, all daughters of dairy farmers.

Orderly Confesses 3 Hospital Fires

An orderly at Norwegian American Hospital, 1044 W. Division, confessed Saturday night that he had started three fires there in the last month.

The orderly, Odell Sullivan, 24, of 1011 N. Ashland, was arraigned.

Bail was raised to $5,000 from $2,500 on petitions of Assistant State's Attorney Edward Hanrahan.

Police said he was on parole for statutory rape in California when he left there early this year. He studied parole conditions of his discharge of address and they passed on the information to a member of records.

Bail said that on Jan. 20 he

Drivers' Strike Halts Airports' Bus Service

Bus service at Chicago's major airports was halted early Sunday when drivers walked out in a scheduled strike against the Commercial Air Transport Co.

The drivers set up picket lines at passenger terminals at Midway and O'Hare airports at the company garage at 7311 S. Cicero.

On strike were 136 members of Local 727, Auto Livery Chauffeurs, an affiliate of the International Brotherhood of Teamsters.

The drivers, who handle 75 buses are seeking a new agreement to replace a contract which expired June 30. They want a guaranteed wage and improved job security and grievance procedures.

Drivers now get $2.63 an hour. The company offered raises totaling 26½ cents an hour in three annual steps or a contract extending to 1966. The members voted to reject the proposal.

EXHIBIT KKKK

Troops He Commanded Hail General Rebuked by Army Story on Page 3

Chicago Sunday Tribune
THE WORLD'S GREATEST NEWSPAPER
HOME
VOLUME CXX—NO. 34 AUGUST 20, 1961 PRICE TWENTY CENTS

REJECT PROTESTS BY WEST

Current Berlin Crisis Born at Vienna Parley

Reds Apply Pressure After Nikita, Kennedy Meeting in Spring, The Trouble Traces to Potsdam

BY CLAY GOWRAN

REDS RIDICULE CHARGES OVER BERLIN CURBS

Blame Bonn for Refugee Flow

'Cops Tried to Kill Me'

Stand in Rain to Hear Johnson

Great Night for Singing at Festival

MORRISON'S 'REASON FOR ACCUSING 8'

Burglar's Views of Reform

JOHNSON VOWS FREE BERLIN

300,000 Hear Pledge to Give U. S. Lives

Chicago Dragging Its Feet in Civil Defense

THE WEATHER

EXHIBIT PPP

Chicago Daily Tribune
THE WORLD'S GREATEST NEWSPAPER
Fair SPORTS FINAL
VOLUME CXX—NO. 16 THURSDAY, JULY 13, 1961 PRICE—SEVEN CENTS

2 COPS ON TRIAL SEEK DEAL

Willis Rehired for Four Years

OFFER GUILTY PLEA IN TRADE FOR LENIENCY

Fear Admissions Damaging

The Editor's DIGEST of Today's News
THURSDAY, JULY 13, 1961

CHICAGO

NATIONAL

INTERNATIONAL

$48,500 SET AS SALARY OF SCHOOL CHIEF

He Accepts New Contract

KIKI WILL STAND FOR JUST SO MUCH

SENATE WOMEN WANT IN SWIM!

2 Seek to Get Barrier to Luxury Pools

3 Ex-Convicts Land State Hospital Jobs

5¢ Charge Set on CTA Transfers

GUNMAN KILLS 2 LAWMEN; DIES IN COLORADO WILDS

3 KILLED, 1 HURT; LIGHTNING HITS TOBACCO BARN

THE WEATHER

CHICAGO AND VICINITY